IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04 .04.2007

Coram

The Honourable Mr.Justice R. Balasubramanian

And

The Honourable Mr. Justice A.C.Arumugaperumal Adityan

CRIMINAL APPEAL No.152 of 2001
& Crl.R.C.No. 239 of 2001

C.A.NO. 152 OF 2001

State by
Inspector of Police C.B.C.I.D.
All women Police Station
B9, Saravanampatty Police Station
Coimbatore City. .. Appellant/Complainant

-Vs.-

1. Rathinam @ Rathinan

2. Dhanusu @ Danushkodi

3. Damodharan

4. Sundaram @ Sundarasamy

5. Krishnan ...Respondents/Accused 1 to 5

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Crl.R.C.No.239 of 2001

Bakkiam ..Petitioner

-vs.-

1. Rathinam @ Rathinan

2. Dhanusu @ Danushokodi

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3. Damodharan

4. Sundaram @ Sundarasamy

5. Krishnan

6. The Inspector of Police
B3 Kattur Police Station
Kovai. ..Respondents

Appeal against the judgment dated 8.11.2000 in S.C.No.96 of 2000 on the file of I Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore.

Criminal Revision Petition against the judgment of acquittal dated 8.11.2000 in S.C.No.96 of 2000 on the file of I Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore.

For Appellant in C.A.No. 152/2001
R.6 in Crl.R.C.No.239/2001 : Mr.N.R.Elango

For RR.1,2,3 & 5 in C.A.No.
152/2001 & R.1,2,3 & 5
in Crl.R.C.No.239/2001 : Mr.V.Gopinath, SC
for Mr.D.Shivakumaran

For Petitioner in Crl.R.C.No.
239/2001 : Mr.M.Venkataraman

For R.4 in C.A.No.152/2001 :Mr.V.Gopinath, SC for
& Crl.R.C.No.239/2001 : Mr.L.Mahendran

J U D G M E N T

(Judgment of the Court was delivered by
R.Balasubramanian, J)

The State is challenging the acquittal of the respondents by the judgment impugned in this appeal. Heard Mr.N.R.Elango, learned Additional Public Prosecutor for the State and Mr.V.Gopinath, learned Senior Counsel appearing for the respondents.

2. In S.C.No.96 of 2000 on the file of First Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore, the respondents were tried under Sections 376, 302, 120-B and 201

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I.P.C. It may be noticed that in the above referred to Sessions Case, final report was filed not only against the respondents herein arrayed as A.1 to A.5 but also against another person arrayed as A.6. The charge against A.6 in the above referred to Sessions Case was under Section 201 I.P.C. It is on record that on an application taken out by A.6 in S.C.No.96 of 2000, the prosecution case against him was split up and taken separately as S.C.No.214 of 2000 by the very same Court of Sessions. We state that the learned Sessions Judge disbelieved the prosecution case against that accused also, separately tried in S.C.No.214 of 2000 and acquitted him. That judgment is also in challenge before this court by the State in Criminal Appeal No.151 of 2001. At the end of the trial, the learned Judge acquitted A.1 to A.5 of all the charges framed against them. As stated earlier, the State is before this court challenging the said judgment of acquittal. For convenience sake in this judgment Anbalagan, Inspector of Police, since tried separately, will be referred whenever need arises as A.6.

3. According to the prosecution at about 7.00 p.m. on 22.12.1995, the first accused raped the victim aged about 16 years, an employee in the mill belonging to his father; murdered her and to screen the evidence of the offence, all the accused hatched a conspiracy and pursuant to that conspiracy, the dead body of the victim was thrown into a well. The other accused (Inspector of Police) - against whom the case has been split up is alleged to have screened the offence by giving a false report. To prove their case, the prosecution examined P.Ws.1 to 66 besides marking Exs.P.1 to P.113 and M.Os.1 to 23. The defence did not let in any oral evidence but however they marked Exs.D.1 to D.5.

4. P.W.1 is the mother of the deceased in this case, who happens to be her eldest daughter. The deceased was working in a mill called Sundaram Mills. P.W.3 also was working there. The deceased was working in the mill for the past five years. As usual, the deceased, after taking her bath, dressed herself neatly and left the house for her work in the mill between 5.30 p.m. and 5.45 p.m. on 22.12.1995. P.W.1 accompanied her daughter and left her near the mill and returned to her house. Then she went to attend the calls of nature and at that time there was a power failure. Then she reached home; had her dinner and slept. Normally her daughter would come back home at 8.30 a.m. in the following morning. However her daughter did not return home even by 8.30 a.m. Telling her neighbour that if her daughter comes home, she can have her food and then sleep, P.W.1 left for her work. Till 11.00 a.m. her daughter did not return home. P.W.1 was told that her daughter might be

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doing continuous shift in the mill and therefore she could go and give food to her daughter. Being sure that her daughter would not do continuous shift duty, P.W.1 left for the mill to see her daughter. There she found A.1, P.W.16 (a fitter by profession) and the owner (a lady) of the mill. Pausing here for a minute we go to the evidence of P.W.3. She would depose that the deceased is her cousin. Five years prior to she giving evidence in Court (she was examined on 3.8.2000), the deceased, this witness and others went for work to the company, which is close to their house. P.W.1, who is the aunt of this witness accompanied her daughter upto the mill and then left. Next day morning, finding that the victim had not returned home they went in search of the victim. Now we come back to the evidence of P.W.1. On reaching the mill P.W.1 told the owner that her daughter had not come home, for which the owner (the lady) replied that her daughter did not report for duty at all and therefore advised P.W.1 to search for her daughter elsewhere. When P.W.1 insisted that her daughter will not stop from attending work without telling her, owner said that she did not know anything. She came home weeping and neighbours decided that a search may be conducted here and there and accordingly P.W.1 in the company of her neighbours searched for her daughter. In the course of such search P.W.1 noticed a watch; some coins; ear studs and hair pins enroute. P.W.1 identified the ear studs as that of her daughter near a well and when she peeped into the well, she found her daughter lying upside down. P.W.3 would state that the search was made in the nearby agricultural land and at that time she heard P.W.1 shouting that her daughter is inside the well, which made P.W.3 and others go there. P.W.1 taking the watch went to the mill to enquire. P.W.3 and others returned home. P.W.3 was present at the time when the dead body was retrieved from the well. P.W.3 noticed tiny pieces of cotton Fibres on the head of the victim. M.O.2, M.O.1 and M.O.3 are the personal wearing apparels, which the victim was wearing on that evening. M.O.13 is the wrist watch available just by the side of the well on the ground. In the land close to the well cholam crops were found damaged. M.O.14 is the ten paise coin; M.Os.15 and 16 are the bangles and M.O.17 is the chain. P.W.3 was examined two or three months prior to she gave evidence in court.

5. P.W.1 along with the watch went to the mill and asked the owner (the lady) stating that as the watch is always worn by the owner (obviously referring to A.1), why they have done like that. The owner (the lady) replied that the said watch will be worn by young boys and therefore she did not know anything about that. P.W.1 holding the legs of the owner (the lady) cried and the lady forced her way out. P.W.1 came home and showing the watch to her husband cried stating that the

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owners have done like that. P.W.1's husband wanted to use the telephone available in the company and they refused to give the phone. P.W.1's husband went to the mill once again and cried to the owner (the lady). The lady replied that she did not know who did that and told P.W.1's husband to go towards the well. When P.W.1's husband wanted to use the phone available in the mill, they said that there is no phone at all. P.W.1 moved away weeping. At that time P.W.4 came in the opposite direction. When P.W.1 asked P.W.4 as to what happened, P.W.4 said that one day he will tell the matter. P.W.4 is also working in the same mill. On her way she met P.W.14 and when he asked her as to why she is weeping, she told about the incident. P.W.16 in his evidence would state that on 23.12.1995 he was in the mill. Sundaram, Ravi and Rangaraj were also there to assemble a machine. At 11.00 a.m. P.W.1 came to the mill and wept that her daughter, who had reported for duty is not to be seen and she was advised to leave stating that her daughter had not reported for duty at all. At or about 1.30 p.m. on that day P.W.1 once again came to the mill weeping that she located her daughter in a well and asked permission to use the phone available in the mill. Her request was refused and P.W.1 left the mill weeping once again. P.W.1 once again appeared in the mill with a watch in her hand and asked P.W.16 showing the watch. P.W.1 then left the mill premises. The mill owner did not allow P.W.16 and others to go near the well. At 3.30 p.m. when P.W.16 told his mill owner about the body lying in the well, he was told that somebody may be lying dead in the well and therefore P.W.16 need not go and see.

6. P.W.14 is a resident of Udayampalayam working as a coolie in Ramakrishna Mill. On 23.12.1995 he was sitting in a temple and at that time he saw P.W.1 coming with tears in her eyes. When P.W.14 asked her as to what it is about, she replied that her daughter, who had gone for work to the mill, the earlier day, did not return. She also told P.W.14 that when she went to the Mill in search of her daughter, she was told that her daughter did not report for duty and therefore she can search for her in some other place. P.W.1 told him that when she was searching for her daughter, she found her inside the well. Then P.W.14 went with P.W.1 to the house of P.W.17. P.W.17 telephoned. Then P.W.1 left towards east. P.W.14 went towards the well where he found some women police and police personnel. It was around 6.00 p.m. There was enough light. Fire Service Personnel came. They arranged to take the dead body. A local person was sent for and by using a rope, the body was retrieved. P.W.14 noticed injuries on the victim's person with her inner wear below the knees. The body was taken in an Ambulance. Then P.W.14 went to his house. At

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8.00 a.m. on the next day morning, P.W.14 was informed by his co-brother that A.4 had been taken by B-3 Police Station. P.W.14 answered that he could not do anything at that time. A.4 is another co-brother of P.W.14. When P.W.14 went to the police station he was not allowed to get inside. P.W.14, his wife and Kalamani (A.4's wife) stood outside the station. The mill owners came in a car. Some women working in the Mill were also brought by them. But however, they were not allowed to get down from the car. On that evening, P.W.14 was taken by a police officer and he was allowed to talk to A.4. When P.W.14 asked A.4, he said that he did not commit the offence. P.W.14 was not allowed to talk further and he was taken out. On the following day also P.W.14 went to the police station and waited outside till the evening at about 7.00 p.m. on that day. A.3 came in a motor-cycle and talked to A.4's wife. A.3 told A.4's wife that his boss would take care of the case and if A.4 is not going to accept, who will give their daughter in marriage to A.1. A.3 also lured A.4's wife with double salary when she comes for duty and promised to take care of her son as well. P.W.14 told A.4's wife that there is something fishy and therefore took her out. On the following day at 8.00 a.m. P.W.14 took A.4's wife and others to P.W.31's garden land. P.W.1, her husband and others were already there. P.W.14 told P.W.31 as to what A.3 spoke the previous day. P.W.31 told P.W.14 that nothing could be decided at that time and they could later on talk to A.4. P.W.14 returned home and went to P.W.31's house the next day morning, and said that he only arranged the marriage of A.4 with Kalamani for which the mill owner had given Thali; that A.4's family is only working there and yet they have done like that. P.W.14 saw A.4 remanded in court. P.W.14, P.W.31 and others went to prison and by filing an application visited him. A few days later, a petition was sent from his party to the Chief Minister, Commissioner and District Collector. P.W.17 is the son of Sri.Vellingiri, Ex.M.L.A. He would state that at about 3.30 p.m. on 23.12.1995 P.W.1, her husband and P.W.14 came to his house weeping. When questioned P.W.1 wept and said that her daughter is lying in a well. When further questioned, P.W.1 told him that her daughter, who left for her job at 6.00 p.m. on the earlier evening did not come back at all and when searched she found her daughter in the well. P.W.17 would state that he was informed by P.W.1 that the mill owners pleaded total ignorance and that they refused P.W.1 to make a telephone call from their phone to the police. Immediately P.W.17 telephoned to B-3 police station and informed them about the incident. Within two minutes, police again called him over telephone and got his message confirmed and then the police reached his house as his house is close to the well. P.W.17 went to the well and observed the dead body and the near by cholam crops were found

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damaged. The Inspector of Police Anbazhagan (A.6 in this case and sole accused in S.C.No.214 of 2000) came there. Vellingiri, Ex.M.L.A., his son Ramamoorthi, present President Sathasivam and local residents were also there. Fire service personnel came and they could not retrieve the dead body from the well. However with the help of a local person, the dead body was taken out of the well. P.W.17 went to his house. He was examined one year before (his evidence was on 7.8.2000) and before that he was not examined at all.

7. After P.W.17 made the call to the police, P.W.1 went near the well and sat there. The police arrived at the spot and the spot was photographed. P.W.1 disclosed to them as to what happened. The dead body of P.W.1's daughter was taken out of the well and she found pieces of cotton Fibres stuck to her scalp hair. P.W.1 also noticed injuries on her daughter. Her daughter's eyes were protruding and her inner wear was found below her knees. Observing everything, the police made notes. Women police were also there and they asked her to sign in those records. P.W.1 was asked to come to the police station and accordingly she went there. There also she was examined and her statement was recorded. Thereafter P.W.1 was not sent for at all. At 9.00 a.m. on the following day (it must be on 24.12.1995) P.W.1 was asked to come to the hospital and on reaching the hospital, she collected her daughter's dead body. P.W.1 was asked to give her daughter's Photographs, which she gave. Later the photographs of A.4 and her daughter were published in a daily. P.W.1 doubted whether A.4 alone would have been involved and therefore went to the house of the former M.L.A., examined in this case as P.W.31. P.W.14 (co-brother of A.4) told Kalamani (A.4's wife) that A.1 alone had committed the crime and soon her husband (A.4) would be released and on such release A.4's wages would be doubled. P.W.14 would state that he also went towards the well, where he found women police and police personnel. It was around 6.00 p.m. Fire service personnel came and tried to retrieve the dead body from the well but could not succeed and with the help of a local person and using a rope the dead body was taken out of the well. P.W.14 noticed the injury on the dead body and her inner wear below the knees. The dead body was taken in an Ambulance. P.W.14 came to know from his co-brother that A.4 had been arrested by B3 Police Station and P.W.14 informed his co-brother that nothing could be done at that time. When P.W.14 went to the police station, he was not allowed to see his co-brother A.4.

8. P.W.31 is a political leader belonging to Communist Party. At 5 or 5.30 p.m. on 23.12.1995 people belonging to Boyar Community from his Village came to him and informed him

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that P.W.1's daughter, who left for work on the earlier evening did not come back home and that the said girl is lying dead inside a well. P.W.31 was requested to accompany them to the well since police have already come there. The well is in a garden land, which is very close to P.W.31's garden land. P.W.31 went there where he found one woman police and two constables. P.W.1 was there weeping. P.W.31 advised P.W.1 to tell the police the truth. P.W.31 then returned home. At 8.00 p.m. he was sent for by the police and accordingly he went to the crime spot where he found the Assistant Commissioner of Police; seven or eight police constables and one or two Inspectors of Police. P.W.31 went around the well and he found the dead body taken out of the well and kept on the floor. The clothes of the dead body was found torn and he noticed cotton Fibres on the dead body. P.W.31 also noticed injuries. The Assistant Commissioner of Police by name Selvaraj called P.W.31 to him and at that time a lady police was recording the statement from P.W.1. The Assistant Commissioner of Police Selvaraj asked P.W.31 to tell the truth. P.W.31 requested the Assistant Commissioner of Police to find out the real culprits. Then the dead body was taken in a vehicle and P.W.31 returned home. P.W.31 attended the funeral on the next day. P.W.31 would state that two days thereafter P.W.1 and a few others came to his garden land. Ten or twenty days later P.W.31 and others went to Crime Branch CID. After P.W.1 visited P.W.31, A.4's wife and P.W.14 visited P.W.31 and told him that A.4 had not been released from the prison. On the other hand he had been sent for judicial remand. P.W.31 told them that whatever may be their grievance they must visit the party office (probably he is referring to the communist party office) and tell them only. Ten or twenty days later the aggrieved party went to Crime Branch CID.

9. P.W.1 would state that she went to the Communist Party Office and told them her version, which was reduced into writing in which she had signed. Ex.P.1 (dated 24.1.1996) is the said petition given by her. P.W.1 would state that a copy of Ex.P.1 was also sent to the Honourable Chief Minister (We find on a perusal of Ex.P.1 that it was addressed to the Commissioner of Police, Coimbatore with copies marked to the Chief Minister, Director General of Police, District Collector and others). One year later P.W.1 went to the house of P.W.4. P.W.1 was sent for by CBCID Police and accordingly she went there. P.W.31 would state that ten or twenty days later, P.W.1 was sent for by CBCID Police. P.W.31 accompanied P.W.1 to CBCID Police where P.W.1 was enquired in confidence by CBCID Police personnel and P.W.31 was standing away from that place and therefore P.W.31 did not know the nature of P.W.1's examination by CBCID Police. However at the end of enquiry

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P.W.31 was asked to sign in the statement as a witness and accordingly he signed. P.W.1 would state that CBCID Police examined her and she gave a statement, which was reduced into writing. She was examined by the Inspector of Police thrice. P.W.1 would state that on the occurrence day she neither gave any complaint in the police station nor signed in any record. However she admitted her signature in the record shown to her and that signature is marked as Ex.P.2. She also admitted her signature in another record shown to her and that signature is marked as Ex.P.3. She identified M.Os.1 to 3 as the wearing apparels of her daughter; M.O.4 as the nose screw and M.O.5 as the ear stud of her daughter She also identified M.Os.6 and 7 as the silver anklets and ring belonging to her daughter; M.O.8 is the basket used to carry Tiffin box; M.O.9 is her slippers and M.O.10 her two hair pins. M.Os.11 and 12 are small vessel and Tiffin box which her daughter was having. She identified M.O.13 as the watch found near the well; M.O.14 is the ten paise coin; M.Os.15 and 16 as green colour bangle and flowers and M.O.17 as the black chain found around her daughter's neck.

10. P.W.2 is a resident of Udayampalayam where P.W.1 was also residing. At 5.30 p.m. in the Tamil month of Margazhi (corresponding to December) she was sitting in her house pial. At that time she saw P.W.1 and her daughter/the victim coming that side and they sat in the pial waiting for the arrival of P.W.3. P.W.3 also came there and then all left for their work. P.W.2 told P.W.1 to come back soon as there is a music programme in the television channel. On that day she saw the victim wearing a white blouse, a red half saree and a red skirt. It was around 5.30 p.m. on that day. Within a short time thereafter electricity failed and P.W.1 did not come back to her house to see the television programme. Power supply was resumed at 7 or 7.35 p.m. Next day morning at about 11 or 11.30 a.m. P.W.2 heard somebody weeping in the house of P.W.1 and accordingly she went there, where on enquiry P.W.1 told her that her daughter did not return home at all and that she was advised by the mill owner to go and search for her. Hearing the wail of P.W.1, other neighbouring ladies also gathered and all of them went to the mill in two different groups. Enroute P.W.2 heard P.W.1 weeping and nearing her she found P.W.1 standing near a well and weeping. Peeping into the well they found P.W.1's daughter lying dead. In the agricultural land neck chain; broken bangle pieces; flowers; a coin and a wrist watch were noticed. P.W.1 taking the watch said that it belongs to the owner (obviously referring to A.1) and taking the watch P.W.1 went to the mill. P.W.2 returned home. She identified the material objects namely, M.Os.17, 18, 14, 15, 16, 13, 3, 1 and 2.

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11. P.W.10 during the relevant time was working as an Officer in the Fire Service Station at Ganapathi and he retired on 31.5.1996. On 23.12.1995 his office received a telephonic information that a girl has fallen into the well. It was around 7.00 p.m. Accordingly he along with his other colleagues reached the well at about 7.10 p.m. where in the well he noticed a girl lying. It was a deep well and in the inner wall of the well there was wild growth and therefore he found it difficult to get into the well. A local man was sent for and with his help and using a rope the body of the girl was taken out of the well. At that time he noticed that the retrieved girl is already dead and accordingly he handed over the dead body to the police. P.W.11 is the local person, who actually retrieved the dead body from the well with the help of fire service personnel. P.W.12 is a resident of Chinnavedampatti where the well is situated. The victim's father is a stone crusher. P.W.12's father is also a stone crusher. P.W.12 was informed by his father that Palanisamy's daughter (P.W.1's daughter) is dead and therefore they must go and see. He reached the well by about 6 or 6.30 p.m. and as it was dark, he was asked to get some petromax lights (gas light). He went to Udayampalayam and came back with two petromax lights which were given back to him after the dead body was taken out of the well. P.W.15 is the photographer, who on instructions from the police photographed the dead body. M.O.19 series are the photographs and the negatives.

12. P.W.66 is the Inspector of Police in Sarvanampatti Police Station (the Investigating Police Station). As per court's order, he re-investigated the crime. On 29.6.1999 P.W.66 examined P.W.1 by recording her statement. P.W.66 took P.W.62 and another, who identified the well as the well where the dead body was found and prepared Ex.P.103, the Observation Mahazar. P.W.66 also drew the rough sketch/Ex.P.110. This was on 29.6.1999. P.W.62 witnessed the preparation of Ex.P.103, the Observation Mahazar. P.W.66 examined witnesses on 30.6.1999 by recording their statements. On subsequent dates also witnesses were examined. He caused the well to be photographed through P.W.58. P.W.58 photographed the crime scene and M.O.20 series are the negatives and M.O.21 series are the photographs. P.W.66 examined further witnesses on subsequent dates and recorded their statements. P.W.66 examined P.W.34 by showing the records recovered by him from the mill premises. Exs.P.25 to P.27 are the records which were examined by P.W.34. Further witnesses were examined by P.W.66 on subsequent dates. By taking orders from Court P.W.66 examined the incriminating objects recovered and lodged in court in P.R.No.513 of 1995 at 11.00 a.m. on 11.8.1999 and prepared the Observation Mahazar. In the red colour half

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saree, skirt and blouse, he noticed pieces of cotton Fibres stuck to it. Therefore P.W.66 gave a requisition to the Court to send the case properties to the laboratory. Ex.P.28 is the report submitted by the office of the Employees State Insurance Company. That record shows that the deceased worked for eighteen days in the month of December. P.W.66 examined further witnesses in the succeeding dates. In the presence of P.W.4, he prepared the Observation Mahazar Ex.P.104 for the place identified by P.W.4. That place was inside the mill. Ex.P.111 is the rough sketch prepared by P.W.66. P.W.58 photographed that place also . M.O.1 series are the photographs of the place inside the mill. On 20.8.1999 P.W.66 gave a requisition to the court to examine P.W.4 under Section 164 of the Code of Criminal Procedure.

13. P.W.4 is a resident of Udayampalayam. He was staying there during the relevant time. At that time, P.W.4 was working in a mill called Sundaram Textiles situated in between Chinnavedampatti and Udayampalayam on a daily wage of Rs.50/-. He was working in the mill for almost 3-1/2 years i.e., from 1993 to 1998. On 22.12.1995 (occurrence day) P.W.4 had a night shift in his mill. His shift period is from 4.00 p.m to 12.00 in the night. Therefore on that day he left his house at 3.30 p.m. On entering the mill, he found A4, his wife and some others washing their hands and legs after finishing their day shift. P.W.4 was operating his machine. At about 5.30 p.m., the owner (lady) was about to leave the mill putting P.W.4 incharge stating that as she is sick, she wants to go to the hospital along with A1. (This witness refers A1 in his evidence as his elder brother). Electricity failed in the evening. Relatives of the owner had come and therefore they did not go to the hospital. A new construction in the mill premises was going on and therefore the owner was talking with the relatives at that place. The owner has a green colour car while the relatives came in a white car. Being a Friday and to do pooja, P.W.4 wanted money to buy coconut and fruits, which was given to him. When P.W.4 was returning after purchasing coconut and fruits, A1 called him and by giving him a sum of Rs.10.50 p., asked P.W.4 to get a cigarette packet. P.W.4 purchased the cigarette packet also and came back to the spinning mill. At that time, he saw P.W.1's daughter coming for the full night shift. P.W.4 exchanged pleasantries with her. When P.W.4 was returning from the shop, on the way he found A4 standing near a temple. A4 told P.W.4 that he was waiting for A5, who is expected there with his wages. P.W.4 gave the balance money to the owner (lady); parked his cycle near the tree and then proceeded towards the mill. At the entrance of the mill, he found the victim's food basket. Further two steps inside, P.W.4 saw A2 coming opposite to him

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and each stood facing each other. At that time P.W.4 heard the victim's voice and when P.W.4 asked A2 as to what it is about, A2 said that it is nothing. When P.W.4 persisted with A2 as to what is happening, A2 answered that the boss (obviously referring to A1) is doing like that. When P.W.4 in anguish asked A2 as to how he could say like that, A2 answered that he will manage and P.W.4 can go to his department and watch whether anybody else is coming. P.W.4 went and stood. In his anxiety to see what is happening, P.W.4, avoiding the first gate, went near the second gate. There is a pooja room at the end of the spinning hall. P.W.4 saw persons in the pooja room standing facing the wall. A2 was standing in the side. There is a window in the pooja room and near that place P.W.4 saw A1 doing the act with the victim. The victim, expressing her fear, requested A1 not to do anything to her. A1 replied by stating that, when he is there, the victim need not have any fear and nothing would happen. P.W.4 moved away to the bathroom to have a beedi and he came back and stood at the place where he was asked to stand by A2. A2 called P.W.4. But P.W.4 refused. However A2 persisted in P.W.4 going near him and infact A2 made his forward move. Therefore P.W.4 also went towards him. At that time A2 told him that because the boss did to the victim, she had become unconscious. P.W.4 asked A2 as to what should be done, for which, A2 wanted P.W.4 to help him in taking the victim to the bedroom, so that she could be made to lie down. P.W.4 obliged A2. On entering the spinning hall, he found the victim leaning on the person of A1 and A1 was holding her. A3 was also standing there closely. A2 advised A3 to go out and stand outside to watch the movement of any persons and accordingly A3 went. A2 wanted P.W.4 to hold the legs of the victim, which he accordingly held. A1 and A2 lifted the victim each holding one shoulder and then the victim was taken to the bedroom, where, she was made to lie down. Emergency light was burning. A1 and A2 closed the screen and P.W.4 came out while A3 went inside. P.W.4 went to the bathroom to have a beedi and when he came out and neared his cone winding section in the mill, electricity power supply was restored and accordingly P.W.4 operated his machine. A1 asked P.W.4 as to whether he had cigarette with him, which he wanted him to buy and P.W.4 gave the cigarettes to A1. A3 wanted P.W.4 to give his cycle to go to the shop and P.W.4 told A3 to use his cycle as it is unlocked. P.W.4 was asked to smoke a cigarette, which he refused stating that he had just then a beedi. However P.W.4 was pestered to smoke a cigarette. Accordingly P.W.4 went to the bathroom to smoke and at that time he saw A3 taking his (P.W.4) cycle and A2, his motor cycle and leaving. P.W.5 was operating the cone winding machine. When P.W.4 neared his machine, he noticed A4's younger sister coming near the cycle and P.W.4 wanted her to wait stating that

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he would also accompany her. Then P.W.4 went towards the spinning room and he did not find the food basket of the victim there. P.W.4 was asked whether the victim had come for duty and not in a position to say what he must say, P.W.4 said that he did not know. The victim was on duty on that day. When P.W.4 came out, he saw some persons. When P.W.4 was moving out, he saw A4 coming in his cycle. There is a lane between the spinning godown and the chording godown. A4, parking the cycle in that lane, entered the office. A1 and A3 came in a bullet motor cycle. The place where A2 is working is at the end of the godown. A2 and A3 entered the office. A2 called P.W.4 and asked him to stand outside the department, where he is working, requesting him to watch the movement of persons. Then A1, A2 and A4 brought the victim out from the bedroom. A3 was moving in the front. Then all of them entered the office while P.W.4 went to his machine. A1 (this witness addresses him as his elder brother) told him that the victim died because he (A1) did like that. P.W.4 asked A1 as to why he is saying like that since, P.W.4 was earlier given to understand that the victim was only unconscious and if she is allowed to take rest in the bedroom, she will recover. A2 intervened and said that they would manage the entire situation and if P.W.4 discloses what happened there to anybody, his entire family would be terminated. P.W.4 prostrated and promised that he would not tell anybody. A2 called P.W.4 and gave him Rs.100/- telling him to get brandy. When P.W.4 came out, he did not find his cycle and therefore went in the company's cycle. P.W.4 returned with the brandy bottle and when he entered the mill, he saw A2 and A3 coming from the last godown. P.W.4 noticed A1 and A4 observing his (P.W.4) machine. P.W.4 gave the brandy bottle to A2. A1 and A4 went to the last godown while P.W.4 started operating his machine. The owner (lady) came in a hurry; stared at P.W.4 and then she also went to the office and then closed the door. A1 to A4 came out and then went to the office. They asked P.W.4 to stand in the spinning room. P.W.4 asked them as to how he could stand and they advised him to keep two boxes and then stand on it, which P.W.4 accordingly did. A3 went out first followed by A1, A2 and A4, taking the victim out. They went towards Chinnavedampatti. There is a transformer there. From there, A4 waved to P.W.4 to go inside and accordingly P.W.4 went inside. A3 took a twine roll. A5 brought back P.W.4's cycle, which was earlier taken by A3. A4 took his cycle while A2 took his bullet motor cycle. A1 went inside the office and took to his bed. P.W.6 came for the night shift at about 11.55 p.m and P.W.4 told him that as his shift is over, P.W.6 can take over. P.W.6, telling P.W.4 that while normally he used to sleep in the factory itself after the shift, asked him why he is going? P.W.4 replied stating that he is going to watch a movie starring Rajinikanth in the

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television. After watching the movie in the dhobi's house, P.W.4 went home to sleep. But however, he could not sleep because of the incident in the mill. P.W.4 went to the mill again at 3.30 p.m on the next day for his shift. He found a crowd in the burial ground at Udayampalayam and when enquired, he was told that the victim was found lying dead in a well. P.W.4 went there to find P.W.1 and the relatives of the victim standing near the well and P.W.1 was weeping. P.W.1 told P.W.4 as to how the mill owner responded (we have already referred to her evidence in the earlier portion of this judgment) when she asked the whereabouts of her daughter. P.W.1 asked P.W.4 as to whether he knows anything about the incident. P.W.4 was about to disclose. But with the fear of threat given by A2 in his mind, P.W.4 silently moved towards the mill. At that time he saw A1, A4 and P.W.16 facing the machine. None of the machines in the mill were in operation on that day. Some one in the mill asked everyone to leave and accordingly, every worker left the mill. P.W.4 also came out. P.W.4 saw in the main road the owner (lady), A1 and A1's sister's husband standing. They advised P.W.4 and others not to go via that road but they must go to their village via Subbiahnaickanur. Accordingly P.W.4 and others took the suggested road to reach their village. On the following Sunday (occurrence was on Friday) P.W.4 was grazing his cattle near the pond. It was around 11.00 or 12.00 in the noon. He was summoned by the mill owners and accordingly P.W.4 went. A2's father and others took P.W.4 in their car to the police station. On the way, P.W.4 was advised that if he is enquired about the victim's death, he must (P.W.4) say that he did not know anything. P.W.4 was taken to B3 Police Station, where he was standing on one side and P.W.1 was standing on the other side and she called P.W.4. However at that time, A2's father came to kick P.W.4 and therefore P.W.4 did not move. P.W.4 was called inside the police station. A1 and A2 came out of the police station. Inspector of Police (A6 - since tried separately) was there and the said Inspector of Police wanted to know whether P.W.4's name is Ravi? This witness answered in the affirmative. Inspector of Police asked P.W.4 whether the victim reported for duty and whether he had seen her when he was coming back to the mill from the shop? P.W.4 did not know what to say and therefore he hung his head down. Police asked A4 to come in, who, on entering, told the Inspector of Police (A6) that he (A4) told P.W.4 while he came back from the shop. Inspector of Police asked P.W.4 as to whether it is true and P.W.4 answered in the affirmative. Inspector of Police asked P.W.4 to sit and then he asked P.W.4 whether he was in love with the victim? P.W.4 answered that though he loved the victim, the victim was not in love with him. A1, A2 and their relatives were there. Two days' later, P.W.4 was taken to a room in the upstairs, where

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he was kept for two or three days. The upstairs room was in B3 Police Station itself. A1, A2, A2's father and a person from Vadavalli were also there. Inspector of Police (A6) asked P.W.4 as to whether he knows to read and this witness answered in the affirmative stating that he had studied upto 6th Standard. P.W.4 was asked to read a paper containing written material. P.W.4 read it twice or thrice. Inspector of Police (A6) told P.W.4 that from then onwards P.W.4 would only state what he read in the paper and if he fails to do so, he would also be put up along with A4 in the case. P.W.4 agreeing, signed in that statement. The owner (lady) accompanied P.W.4 thereafter for some time and then she left. Five or six months later, A1 told this witness that CID Police is calling him. Accordingly, P.W.4 went in the car along with A1, A2 and P.W.6. The owner (lady) came in another car along with another lady worker of the mill. On the way, A2 told P.W.4 that he (P.W.4) should only tell what he was told to say in the police station and if he deviates, he would also be put in the lock-up and tortured with pins. P.W.4 agreed and went before the CID Police. There were two or three persons. On questioning, P.W.4 told them his name and his address. They also asked him whether he was in love with the victim and he replied that though he was for her, yet, she was not for him. When the CID Police asked him whether the victim reported for duty, P.W.4 answered in the negative. When the CID Police questioned him as to whether he saw anybody when he returned from the shop, P.W.4 answered in the negative. CID Police questioned P.W.4, as to who committed the crime, A1 and A2 were by his side. P.W.4 said that he did not know. Two days before the hearing in the court, P.W.4 was told that he must see their lawyer. A1 took P.W.4 to the lawyer and the lawyer asked P.W.4 as to whether he is Ravi? P.W.4 answered "yes". The lawyer told P.W.4 that there need not be any connection between him and the crime; he need not have any connection with his boss (A1) and whatever may be the question in court, P.W.4 must say that he did not know. P.W.4 agreed to say so. P.W.4 was taken to the court in a car (we want to make it clear at this stage that the above appearance of this witness in court is in the earlier sessions case when A4 alone was tried for the offence of murder). P.W.4 was asked to sit without being noticed by the police. P.W.4 was summoned inside the court and he was asked to tell the truth (the witness added that he came to the same court – obviously he means the court in which A4 alone was tried). P.W.4 was asked to take the oath, which he accordingly took. When examined, P.W.4 said that the victim did not report for duty and that he did not see anybody. Five or six months after this witness gave evidence in that case (in the case in which A4 alone was tried), P.W.1 asked him (P.W.4) as to whether he could atleast tell the truth then and P.W.4 told

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P.W.1 about the incident. A few day's thereafter, P.W.66 examined him. Police asked P.W.4 to tell the truth and the witness replied that he was having fear in his mind. Since police told him that they would take care of the entire situation, P.W.4 told the truth. Police asked P.W.4 to identify the place in the mill where the crime was committed and accordingly P.W.4 showed that place to the police. P.W.4 was examined by the Judicial Magistrate. P.W.4 identified A1 to A5 in the court; M.Os.3, 1 and 2 as the personal wearing apparels of the victim and M.O.8 as the food basket of the victim.

14. P.W.29 was the District Secretary of the Communist Party of India in the year 1995. A4's younger sister, his wife and his maternal aunt told him that the crime registered in this case should be properly enquired. On the details given by them, P.W.29 found that a case is made out and accordingly a petition was given to the police officers. Ex.P.21 is the copy of the said petition. The petition was initially given for investigation to CBCID Police. However CBCID did not act and therefore another petition - a copy of which is Ex.P.22, was given for investigation by any other Agency. Ex.P.23 is the acknowledgement from the Chief Minister's cell for receipt of the above petition. Within a few days thereafter, police examined them. P.W.61 was the Inspector of Police, CBCID, Coimbatore from 04.03.1993 to 26.12.1996. His Head Office forwarded a petition given by P.W.29 for a thorough investigation in Crime No.81/1995 registered under sections 376 and 302 I.P.C (the present sessions case has arisen out of the said crime number). P.W.29 had mentioned in that complaint that A4, who had been put up as the sole accused, is innocent and in the murder of the victim, there was a suspicion about the involvement of the mill people. P.W.61 examined witnesses on 05.04.1996, 06.04.1996 and 07.04.1996. P.W.61 noticed that the crime was under investigation by the regular police and A4 was in judicial remand. P.W.61, after completing his enquiry, sent his report to the Head Quarters of CBCID. P.W.61 admitted that he had not re-investigated the crime and since a report was asked for expeditiously, he sent his report with the materials available with him and that he did not examine the other witnesses. We have already noted, when we were narrating the evidence of P.W.4, that he was examined by the CBCID Police. P.W.5 during the relevant time was working in Sundaram Textiles - the mill concerned in this case. A5 secured him employment there. The occurrence was on 22.12.1995. It was a Friday. P.W.5 had night shift. He was cooking around 5.30 p.m. At that time, P.W.5 saw A1's sister and A1's brother-in-law standing near the new construction and talking. They were there for half an hour. At the same time, before the mill

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premises, A1 was talking with another person. Another person from Vadavalli came in an Ambassador car. They were talking for a very long time. After taking his food, P.W.5 came out around 6.00 or 6.30 p.m to report for the night shift duty. P.W.5 also saw at that time the victim crossing the road and proceeding towards the mill for work. P.W.5 did not see her later on. Electricity failed around 6.15 p.m and was restored at 7.15 p.m. P.W.5 dusted his machine and then went to the spinning section around 7.30 p.m to get yarn. He noticed P.W.4 operating his machine. P.W.5 returned to his section bringing enough yarn. As the winter climate is likely to affect the yarn, P.W.5 had partially closed the doors. When P.W.5 was working, he saw A1 and A4 taking the victim by giving hand support around 8.15 p.m followed by A2 and then holding the victim in a standing position and without creating any suspicion, they threw her. P.W.5 saw it from a distance of 10 feet. Then all the persons moved away behind the bushes. P.W.5 did not know why they threw. P.W.5 did not pursue further because, he was concentrating on the work and any lapse on his part would result in the yarn getting cut. Since P.W.5 is a contract labourer, his wages depends upon his work turn out. On the next day morning, he gave the owner (lady) the details of the work done by him and then left for his house. At 5.30 p.m on that day when he was cooking, he found the villagers and police behind the farm house near the well. Out of anxiety, P.W.5 went there to find the feet of a female. However he could not find who that person is? A1's mother and another lady were standing there. When P.W.5 probed further, he was told that P.W.1 is weeping since somebody had murdered her daughter and threw her inside the well. P.W.5 realised that it is a planned murder. Police asked A1's mother by showing the watch and she pleaded total ignorance. P.W.5 said that the watch looks like the one belonging to P.W.6. As the police advised the crowd to disburse, P.W.5 left that place. At 8.00 a.m the following morning, P.W.5 returned and at that time he saw, in a green colour car, P.W.4 seated along with others to go to the police station. A1 told P.W.5 not to come. P.W.5 went to P.W.6 to verify whether the watch belongs to him and P.W.6 told him that he had already sold the watch to A4. P.W.5 told P.W.6 that he was suspecting a murder. P.W.5 left the mill once for all, requesting P.W.33 to find him an alternate job. P.W.33 asked P.W.5 as to whether anybody is talking about the occurrence, for which, P.W.5 said that he saw three persons taking the victim and that he has decided not to work there any more. On reaching his village, P.W.5 saw in the newspaper the photograph of A4 and the victim stating that A4 raped and murdered her. Ten days' later, P.W.5 joined in another mill at Coimbatore, where, A1's brother-in-law was the Supervisor. Police from B9 Police Station enquired P.W.5 and

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asked him to disclose whatever he knows. P.W.5 was examined by the Judicial Magistrate. P.W.5 told P.W.66 what he saw. P.W.5 identified A1 to A5 in court and M.Os.1 to 3 and 13.

15. P.W.6 is a resident of Chinnavedampatti employed in Sundaram Textiles at Chinnavedampatti. On the occurrence day namely, on 22.12.1995 P.W.6 had a full night shift duty. He reached the mill at about 11.15 p.m. P.Ws.4 and 5 were there in the mill. P.W.4 after finishing his shift went home asking P.W.6 to take care of the machine. When P.W.6 asked P.W.4 why he is going home, when he normally sleeps only in the mill, P.W.4 left stating that he is going to see a movie in the television. P.W.6 had duty till 7.30 a.m. in the following morning. After finishing his work when P.W.6 was leaving for his house, he saw A.4, his wife and others reporting for duty. At 6.30 p.m. on that evening A.4, his wife and others met him on his way and told him that P.W.1's daughter is lying dead in a well near the mill; there was a crowd; police is examining by showing a watch; everyone had said that they did not know anything and therefore if the police examines P.W.6 also he must also say the same thing." A.4 reiterated that P.W.6 should disown any knowledge about the watch. P.W.6, A.4 and their friend had a cup of tea. Then A.4 left. Within fifteen minutes thereafter A.4 come back and when P.W.6 asked him as to why he had came back, A.4 replied that as he found police near his house he is going to meet his uncle. A.4 returned a little later and asked P.W.6 to accompany him in his cycle to B3 Police Station as he had come to know that the police were examining the workers in the mill. Leaving P.W.6 outside the police station and locking his cycle A.4 went inside the police station and did not come out for half an hour. Therefore P.W.6 decided to leave the place and at that time he saw A.4's sister's husband standing there in a cycle. P.W.6 went along with him. At about 12.00 in the night, the mill owner's son (he obviously refers to A.1) came along with two police personnel in a car and took P.W.6 to B3 Police Station where P.W.6 was examined. The watch was not shown to him. The police asked P.W.6 whether he had sold the watch to A.4, for which P.W.6 answered that he sold the watch to A.4 for a price of Rs.125/-. P.W.6 was asked to sit in the police station. Then the police asked P.W.6 to come to the police station for two more days. P.W.6 reported for duty on Thursday. Four or five months thereafter the mill owners have taken P.W.6 in a car to CBCID Police. To that place also mill owner's son; his brother-in-law and two police came. P.W.6 was tutored by them as to what he must tell to CBCID police and accordingly P.W.6 told CBCID police. Deepavali was over. While returning, P.W.6 saw A.4, who told him that the trial in the case had commenced and one day A.4 would come and take P.W.6. Two days thereafter

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P.W.6 and others were taken in a Car to the Court where P.W.6 was asked to sign. Then P.W.6 was taken to a lawyer, who advised him that if P.W.6 was asked about the watch, he must disown any knowledge. Two days later, A.4 came to P.W.6's house and reminded him that if anybody asks him about the watch, he (P.W.6) must say that he did not know. Since P.W.6 was taken under threat to the court to disown any knowledge about the watch, he gave evidence in the very same court on the above dotted lines. P.W.6 was again examined. At that time he told the Inspector of Police that he had not seen the watch at all. However he told the Inspector of Police that he can identify the watch if it is shown to him. Arrangements were made for P.W.6 to see the watch and he identified the watch in court. For one or two months thereafter P.W.6 was not in the village. However since he was under increasing pressure he left for his village. A.1 and A.4 were pressurising P.W.6. After he left for his village, police informed him that there is summons for him to appear in court and that is why he had come to court. He identified A.1 to A.5 and M.O.13, the watch.

16. P.W.7 during the relevant time was having a grocery shop near the temple of Sri Rama at Chinnavedampatti. Just two or three days prior to Christmas in the year 1995, A.4 had come to his shop as usual to buy coconut and fruits. There was no electricity at that time. A.4 after purchasing coconut; fruits and cigaret left. Next day P.W.7 came to know from the villagers that P.W.1's daughter is lying dead. Police sent for him to the police station. P.W.8 is a resident of Udayampalayam. He would do odd jobs. Between 1994 and 1998, he was selling small eats near a wine shop. In December, 1995, on a Friday A.4 came to his shop accompanied by a boy. Arusamy is the co-brother of A.4. A.4 purchased some beer and then some short eats, which he finished and then left. P.W.8 came to know on the following Sunday that A.4 was arrested by the police in connection with the murder of the victim. P.W.8 informed the co-brother of A.4, who pleaded ignorance. P.W.8 was examined by the police as to whether he knows A.4 and he answered in the affirmative stating that A.4 came to his shop along with a boy and bought something. The police asked P.W.8 as to whether he knows the boy, who accompanied A.4 and P.W.8 answered that though he did not know, yet he can identify him on seeing. Ten days thereafter P.W.8 was summoned to appear in the Central Jail. P.W.8 was asked to identify the boy, who accompanied A.4 and he identified the boy. A.5 in court is the person, who accompanied A.4 on that day. P.W.9 is a driver by profession residing at Chinnavedampatti. On the occurrence day night around 11.30 p.m. he went out to answer the calls of nature. At that time A.4, who is his friend came. P.W.9 asked A.4 as to where he is going and A.4 kept a total silence.

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When P.W.9 reiterated his question A.4 said that he had some liquor with Krishnan (A.5) and that A.3 is taking him to the mill. P.W.9 was informed that the mill owners' sons A.1 and A.2 had made some mistake. When P.W.9 wanted to know what is that mistake, A.4 left stating that P.W.9 would come to know it later on. On the next day P.W.9 came to know that in the well there is a dead body and A.1, A.2, A.4 and four or five persons were taken by the police for interrogation. P.W.9 left for the village and returned only one week thereafter and at that time he came to know that A.4 is involved in the crime. Ten months before P.W.9 gave evidence in court, which was on 4.8.2000, P.W.66 examined him. P.W.13 was a resident of Udayampalayam during the relevant time. The victim in this case is her niece. At Udayampalayam they were residing close by. Before marriage she was working in the mill. However after marriage she stopped going to work. During the occurrence time P.W.13 was in the house only. Between 5.45 p.m. and 6.00 p.m. on 22.12.1995 (the occurrence day) P.W.1 came back after leaving her daughter (the victim) in the mill. There was power failure. Next day morning P.W.1's daughter did not return home. P.W.1 was advised to go and enquire in the mill. P.W.1 went to the mill and returned and sitting in front of her house started weeping. When asked, P.W.1 replied that though she had left her daughter in the mill on the earlier evening for work, she was told that she was not there and that P.W.1 should go and look out for her daughter somewhere else. P.W.13 in the company of others went in search of the victim girl and when they were passing the well, P.W.1 standing near the well started weeping. When asked P.W.1 said that her daughter is inside the well. P.W.13 observed broken bangles, flowers and hair pins in the adjacent agricultural land. P.W.13 also noticed a wrist watch and a ten paise coin. By taking the watch P.W.13 in the company of P.W.1 and others went to the mill where P.W.1 told the mill people by showing the watch that it belonged to the owner. The mill owner (the lady) answered that the watch does not belong to them. The witnesses wanted to make use of the telephone available in the mill premises, for which permission was refused stating that the witnesses can go elsewhere and telephone. Prostrating and holding the legs of the mill owner (the lady) the witnesses wanted her to permit them to use the telephone and again the mill owner refused. The witnesses along with P.W.1 came back to the well and P.W.1 proceeded to the house of Vellingiri (P.W.17 is the son of Vellingiri) to make a telephone call. Police came at about 4.00 p.m. and retrieved the body at about 8.00 p.m. P.W.13 noticed pieces of cotton Fibres stuck to the head and body of the victim and injuries also. The body was taken by the police to the hospital. However, P.W.13 did not accompany them. On the next day morning the victim's

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photograph was collected from P.W.1. Thereafter the photograph of A.4 and the victim were published in the paper. It was a shock to P.W.13 and the other witnesses since they were entertaining a suspicion on the mill owners. P.W.13 was taken to the police station. One year later Inspector of Police from Saravanampatti enquired them as to whether they have any suspicion and they answered indicating the names whom they suspect. P.W.13 identified M.Os.1,2,3,13, 14 and 15.

17. P.W.18 is a resident of Chinnavedampatti. On the day following the occurrence day P.W.18 went to the police station to see A.1, who is his friend. The Inspector of Police asked him to sign, for which P.W.18 asked as to why he has to sign. The Inspector of Police prevailed upon P.W.18 stating that as he is the friend of A.1, he can sign. Therefore P.W.18 signed. P.W.18 did not know anything about the case and that he had signed in a white paper twice or thrice. P.W.18 admitted his signature in the summons served on the panchayatdars (P.W.18 is an inquest witness) and his signature stands marked as Ex.P.5. P.W.18 also admitted his signature in the inquest report and that signature is marked as Ex.P.6. P.W.18 would add that he put the signatures Exs.P.5 and P.6 in B.3 Police Station. P.W.19 is another resident of Udayampalayam. He would state that he signed in B.3 Police Station on 23.12.1995. According to him, P.W.1 is her neighbour and since P.W.1 had gone to the police station, he had also gone there. P.W.19 was told that he is signing as a panchayatdar and therefore he had signed. He admitted his signatures in the summons and in the inquest report and they are marked as Exs.P.7 and P.8. P.W.20 is also a resident of Udayampalayam. According to him on a Sunday when he was sleeping in his house, he was called to the police station by a police constable by name Senthil and accordingly he went to Gandhipuram Police Station where he had signed twice. He had admitted his signature in the summons and in the inquest report and those signatures are marked as Exs.P.9 and P.10. He had put those signatures in B.3 Police Station. P.W.21 is also a resident of Udayampalayam and he knows A.1. P.W.21 reached B.3 Police Station at about 6.00 p.m. on 23.12.1995 and A.1 was there for interrogation. To release A.1, the police asked P.W.21 to sign and accordingly P.W.21 signed. He admitted his signature in the summons and in the inquest report and they are marked as Exs.P.11 and P.12. He would state that he has put those signatures in B.3 Police Station. P.W.22 is a resident of Chinnavedampatti. Between 5.30 and 6.00 p.m. on 23.12.1995, he went to the land where the well is situated. That well belongs to his uncle. P.W.22 found a crowd there and he was informed that there was a body inside the well. Between 7.30 and 8.00 p.m. the body was retrieved from the well and P.W.22 was asked to come to the

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police station between 8.30 and 9.00 p.m. Since the well belonged to his Uncle, he was asked to come. In the police station, he was asked to give a statement that he had observed the dead body in the well. But however he had signed in one paper. He admitted his signature in the summons, which signature stands marked as Ex.P.13. P.W.23 is having a tourist taxi and making his livelihood from the income which he derives therefrom. Four years before, he gave evidence in court (his examination was on 7.8.2000), he went to B.3 Police Station where he was asked to sign as a panchayatdar. P.W.23 signed twice. He admitted his signature in the summons and in the inquest report and they are marked as Ex.P.14 and P.15. One year prior to he gave evidence in court P.W.23 was examined in B.9 Police Station. He put his signatures only in the police station.

18. P.W.24 was the Village Administrative Officer of Chinnavedampatti during the relevant time. The occurrence had taken place on 22.12.1995 and P.W.24 was not in the Village on 23rd, 24th and 25th of December, 1995. He returned to the Village on 26th and left for revenue collection. On 27th, he received a telephone call from B.3 Police Station asking him to come to the police station. He received the telephone call to the phone available in a shop close to his office. Accordingly, P.W.24 went to the police station where the Inspector of Police (there is no dispute that he refers to A.6) wanted him to give a report that A.4 had surrendered on his own. P.W.24 refused to give stating that it is a police case. But however when the Inspector of Police narrated that A.4 surrendered on 27.12.1995 P.W.24 reduced that into writing. He also added that he did not remember what he wrote. He admitted Ex.P.16 as the said report written by him, which he wrote in B.3 Police Station. P.W.24 affirmed that the contents of Ex.P.16 showing that the accused surrendered is false. P.W.24 also stated that he cannot identify the accused, who is stated to have surrendered before him since he had seen him only once. P.W.24 would then add that he did not take A.4 to the police station but however A.4 was already in the police station. The Head Constable in the police station recorded the confession statement of the accused in which P.W.24 had signed. He admitted his signature in that statement and that signature stands marked as Ex.P.17. He would then state that the Inspector of Police (A.6) did not examine him thereafter and on 30.11.1999, P.W.66 examined him. P.W.24 was summoned to appear before Judicial Magistrate, before whom P.W.24 gave a statement.

19. P.W.25 is having a cycle shop. In the month of December, 1995 he went to B.3 Police Station to get a licence

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to fix an amplifier for his party function. P.W.24 was there, who was enquired by the Inspector of Police, B.3 Police Station. At that time P.W.25 noticed on the Inspector's table, a wire basket and a small tiffin carrier. They are M.Os.8 and 12. At the request of the Inspector of Police P.W.25 signed in a paper shown to him. His signature in that document stands marked as Ex.P.18. He would depose that he did not know as to why it was taken from him and he is also not aware about the contents. Ex.P.19 is his admitted signature in another document, which also he signed in the police station. He had signed, since the Inspector of Police Anbazhagan (A.6) asked him to sign. He was later on examined by the Inspector of Police, B.9 Police Station. P.W.26 in the year 1995 was the woman police constable. At 4.00 p.m. on 23.12.1995 as directed by the Head Constable, she registered the crime in this case. She went to the crime scene and she accompanied the dead body with the requisition given by the police to the hospital for post-mortem. After post-mortem she handed over the dead body to the relatives after removing M.Os.1,2,3,4,6,7,20,21 and 22, which she handed over to the investigating officer. She identified all those articles in court. On 28.8.1999 she was examined by the Inspector of Police, B.9 Police Station. P.W.27 was the head constable on 23.12.1995 in B.3 Police Station. As directed by the Inspector of Police Anbazhagan (A.6) he carried the express records registered as "suspicious death" to the court and handed over the same to the court at 6.30 p.m. on the same day. P.W.28 in the year 1995 was on duty in B.3 Police Station. He was working in the Women Police Constable Wing. The Inspector of Police gave him his note regarding the crime scene, on which he drew the sketch. Ex.P.20 is the sketch. P.W.30 is the Cardiologist in a private hospital at Coimbatore. Six months before he gave evidence in court (his evidence was recorded on 8.8.2000), the Inspector of Police, Samudrakani (P.W.66) enquired him with regard to the treatment given by him to a lady by name Sundarammal in the year 1995. He would depose that all the records relating to that patient had been given to the patient herself. P.W.32 was an Assistant Engineer in Tamil Nadu Electricity Board in the year 1995 at Saravanampatti. Between 5.24 a.m. and 6.54 a.m. and 6.13 p.m. to 7.09 p.m. On 22.12.95 there was total power disruption in Saravanampatti, Chinnavedampatti, Kalapatti, Karathumedu and Chinnamedu. Based on the contents of the daily log book he gave Ex.P.24 report. P.W.33 was working in Sundaram Mills for about four or five months in the year 1995. That mill is at Chinnavedampatti. One month prior to the occurrence in question he left the job. P.W.5 told him that he was afraid to work in the mill and therefore requested P.W.33 to find him another employment. This was on 25.12.1995 and thereafter P.W.5 did not work in the mill at all. P.W.34 is

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working in Employees' State Insurance Corporation. When he was not on duty, he used to write accounts for a couple of mills. He had written accounts for Sundaram Mills at Chinnavadampatti from 1992 to 1996. He had written for that mill, the wage register, which is marked as Ex.P.25. For December, 1995 also there are entries in Ex.P.25 which shows that P.W.1's daughter worked in that mill for about eighteen days. Ex.P.26 is another register which also shows that P.W.1's daughter worked in that mill for about eighteen days. Form-7 - Ex.P.26 also shows the attendance of P.W.1's daughter for eighteen days in the mill. Ex.P.27 shows the details of persons, who left the job. He was examined by the police.

20. P.W.35 is the Employees State Insurance Corporation Inspector. He used to verify the various registers and sign it. Likewise he had verified the various registers available in Sundaram Mills. He had scrutinized the attendance register, wages register, form-7 register and challans. On 22.4.1996 he signed in Ex.P.27 and the wages register. Ex.P.28 is the report. P.W.36 is having a photo studio and in December, 1995 (he does not remember the date) he was summoned by B.3 Police Station to take photographs. However he had sent his friend, who was in his shop with the camera, for the job. Kamaraj, his friend accordingly took some photographs and came back to the shop. At 9.00 p.m. he handed over the camera with the film. P.W.36 developed the prints. Twenty to Twenty five days thereafter some one from the police station came and collected the photos. M.O.19 are the photographs. During 1995-1996 he was not examined by the police. But however one year before he gave evidence in court, which was on 8.8.2000 he was examined by the police. P.W.37 is working in the Municipality. In the year 1995 he and his friend Natarajan went to B.3 Police Station for getting permission to use an amplifier. The Inspector of Police was enquiring the Village Administrative Officer. The Inspector of Police asked this witness and his friend to sign a request for permission to use the amplifier. Accordingly, P.W.37 and his friend signed. Ex.P.29 is his signature in that application. Ex.P.30 is his signature in another document. However he did not know the contents of those two documents.

21. P.W.66 was continuing his investigation by examining witnesses and recording their statements. On 21.8.1999, 22.8.1999 and 24.8.1999 he examined Ramalingam, Ravi and Palanisamy respectively by recording their statements. On 26.8.1999 P.W.66 examined Andi, Ravi and Kamala and on 28.9.1999 he examined Eswari and Saraswathi by recording their statements. Witness Eswari stated that she would give a statement on her report only after looking at the original. On

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27.8.1999, 30.8.1999 and 2.7.1999 he examined witnesses by recording their statements. A witness from the Electricity Department gave a certificate stating that there was power disruption at Chinnavedampatti (in the evidence it is wrongly stated as 25.12.1992). Ex.P.24 is the said Certificate. On the same day P.W.66 examined witness Muthulakshmi and on a search warrant obtained, he searched Sundaram Mill on 14.7.1999 between 11.15 a.m. and 11.30 a.m. in the presence of witnesses Ramasamy (Village Administrative Officer) and Kalimuthu by serving a copy of the search list on the owner. The search list is Ex.P.105. Between 1.45 p.m. and 3.30 p.m. on the same day, in the presence of the same witnesses P.W.66 also searched the house by giving a copy of the search list to Sundarammal. The statements of Ramasamy, Kalimuthu and Ramamurthy were recorded. P.W.66 gave a requisition on 15.7.1999 to the telephone department asking for detail as to whether the telephone in Sundaram Mills was in a working condition on 22.12.1995. Ex.P.1 is the petition given by one Bakkiam namely, P.W.1 to the Commissioner of police and Ex.P.21 is the petition given by Thangavel. P.W.66 examined witnesses on 17.7.1999, 19.7.1999 and 13.8.1999 by recording their statements. He also examined P.W.1 based on her petition Ex.P.1. He took sample signature of P.W.1 in the presence of witnesses and sent it to the court. On 22.7.1999 he examined further witnesses by recording their statements. He also examined further witnesses on 25.7.1999, 30.7.1999, 31.7.1999, 2.8.1999, 3.8.1999 and 31.8.1999. On 1.9.1999 witnesses Ganesan and others appeared in court and identified the watch. On 2.9.1999 P.W.66 examined witnesses Karuppusamy and others and on that basis a request was made to the Court to conduct the test identification parade to enable the witnesses to identify the suspected accused by name Krishnan - A.5. Further witnesses were examined on 19.9.1999, 31.9.1999, 23.9.1999, 25.9.1999 and 26.9.1999. Ex.P.4 is the special report given by the fire service department.

22. P.W.66 examined police photographer M.S.Ulaganathan by recording his statement. He recovered twelve photographs from that witness and sent it to the Court. M.O.22 series are the photographs. Steps were taken to enable P.W.1 to appear in court and identify the watch on 29.9.1999. Further witnesses were examined on 1.10.999 at 9.00 a.m. on 2.10.1999. P.W.66 arrested A.1. At 12.00 noon on the same day. P.W.66 arrested A.2. He brought them to the police station, where in the presence of witnesses he took the sample signatures of A.1. P.W.66 sent a requisition to the court to collect the semen and saliva from those accused. The arrested accused were sent for judicial remand. At 11.00 a.m. on 3.10.1999 P.W.66 arrested A.3 and sent him for judicial remand. A requisition was given

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to the court to examine his blood, semen and saliva. On 4.10.1999 A.5 was arrested and he was also sent for judicial remand. Witness Eswari was sent to the court to inspect her special report. On 7.10.1999 P.W.66 gave a requisition to the court to conduct the test identification parade for A.5. Further witnesses were examined on 9.10.1999, 10.10.1999 and 13.10.1999. On 14.10.1999 A.1 to A.3 were produced before the Medical Board. On 22.10.1999 P.W.66 gave a requisition to the court to send the sample signatures of the accused to expert's opinion. Further witnesses were examined on 25.10.1999. A.1 refused to give his semen and therefore he was sent to Central Prison, Coimbatore on 29.10.1999. Again P.W.66 gave a requisition to the court to send A.1 to another hospital for collection of his semen and examination. P.W.66 examined medical witnesses by recording their statements.

23. P.W.38 during the relevant time was working as Assistant Director, Forensic Science Laboratory, Chennai. On 5.3.1996 his laboratory received twelve articles, among which there were half saree; blouse, bra, inner skirt and inner wear and on examination they found to contain human blood. In the torn inner skirt, human blood was found. In the half saree, bra and blouse, human blood of "O" group was found. However in the other two articles grouping was inconclusive. In the blue colour inner skirt semen of human origin was found. However its constituent blood group could not be fixed and it is because all the essential component in it having lost its life. Ex.P.31 is the Serologist's Report. The vaginal swab and the blood preserved from the dead body were examined and they were found to be of human origin and the blood group is "O". Ex.P.32 is the Chemical Examiner's Report. Ex.P.33 is the Serologist's Report. The pubic hair of A.4 was examined to find whether it has any symptoms of semen and it was not found to be. Ex.P.35 is the report. P.W.39 is another Scientific Expert working in the Forensic Laboratory. The material objects in this case namely, half saree, blouse, bra, in skirt, inner wear, nose screw, wire basket, jute thread, hair pin, Titan wrist watch, ear stud, two broken pieces of glass bangles, six broken glass bangles, beads made of clay with two dollars were received by his laboratory. On examining the skirt, nose screw, wire basket, jute thread, half saree, blouse, bra, inner wear and hair pins, cotton Fibres were detected. Ex.P.35 is his report. P.W.40 is another Scientific Expert, whose report is Ex.P.36. The said report reads as hereunder:-

> "1. The pins in the wrist watch, item 6 are intact; and this item 6 could not be removed from the wrist without releasing the chain lock.

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2. The cut-ends of the strings in item 20 show that they could have been served by pulling forcibly the knot near the cut-end of one of the strings had been made after they were served from the chain to keep the remaining heads intact.

We are unable to express any opinion on the points raised on items 8,9,11 and on the other points on items 6 and 10."

P.W.41 is another Scientific Expert, whose report is Ex.P.37, which shows that in items 3, 4 and 5 examined by them neither oil nor any other inflammable substance were detected. P.W.42 is another Scientific Expert, whose report is Ex.P.38. He examined some specimen handwritings of various persons sent to his laboratory. He deposed about the examination done by him and his conclusion arrived at therein. His report reads as hereunder:-

"1. The person who wrote the red enclosed signatures and numerals stamped and marked S1 to S55 also wrote the red enclosed signature and date similarly stamped and marked Q1 and Q2.

2. The person who wrote the red enclosed signatures and writings stamped and marked S81 to S210 also wrote the red enclosed signature and writings similarly stamped and marked Q6 and Q7

3. The person who wrote the red enclosed writings and signatures stamped and marked S211 to S359 did not write the red enclosed writings and signature similarly stamped and marked Q8 to Q10 and Q8a.

4. The person who wrote the red enclosed writings stamped and marked S360 to S422 also wrote the red enclosed writings and signature similarly stamped and marked Q8 to Q10 and Q8a.

On the basis of the present material it is not possible to offer any reliable opinion on the other points."

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The sample signatures examined by him is that of Bakkiam, P.W.1; Manohar, P.W.34 and A.1. These sample signatures were verified with the records available in this case. P.W.43 was the duty Doctor in the Government Medical College Hospital, Coimbatore. As per the directions of the court, a medical team of that hospital examined A.1, A.2, A.3 for their potency. It was found that there is nothing to indicate that they were impotent. A.2 and A.3 gave their semen for examination. However A.1 refused to give. Ex.P.39 is the report.

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24. P.W.44 during the relevant time was Judicial Magistrate No.I, Coimbatore. As directed by the superior court, she conducted the test identification parade to identify the arrested accused/A.5 on 15.10.1999. P.W.8 correctly identified A.5 on all the three occasions. When A.5 was asked by P.W.44 as to whether he has any objections, he answered that he was shown to the witnesses on 4.10.1999 when he was taken from the police station to the court for judicial remand. Ex.P.40 is the proceedings drawn by Magistrate for the test identification parade conducted by her. P.W.45 during the relevant time was Judicial Magistrate No.III, Coimbatore. As per the orders of the superior court, she examined Sundaramoorthy under Section 164 of the Code of Criminal Procedure and recorded his statement. Ex.P.41 is the said statement. P.W.46 was Judicial Magistrate No.VII, Coimbatore during the relevant time. On a request given by the investigating officer of B-9 Police Station, the Chief Judicial Magistrate, Coimbatore passed orders directing examination of witnesses under Section 164 of the Code of Criminal Procedure. He examined P.W.1 and Arusamy on 24.8.1999; P.W.5 on 25.8.1999 and recorded their statements. On 31.8.1999 he examined P.W.33 and recorded his statement under Section 164 of the Code of Criminal Procedure. Ex.P.42 series are the statements. On 25.8.1999 he also examined P.W.4 under Section 164 of the Code of Criminal Procedure. Ex.P.43 is his proceeding.

25. P.W.47 during the relevant time was the Section Officer in the office of the Commission of Police, Coimbatore. The Inspector of Police, B9 Police Station gave a petition to the Commissioner of Police and on orders passed on that petition by the Commissioner of Police, he retrieved from the records Ex.P.1 dated 24.1.1996 given by P.W.1 and the enquiry report on that petition. The enquiry report is Ex.P.44. Exs.P.45 and P.46 are the proceedings on the file of the Director General of Police ordering enquiry into the complaint given by P.W.1, Bakiam and Thangavelu (P.W.29). Ex.P.47 is the order under which the proceedings were transferred to the Assistant Commissioner of Police, Coimbatore for enquiry. Ex.P.48 is the copy of the report on that enquiry sent to the Director General of Police. Ex.P.49 is the copy of the communication sent to the Joint Secretary to the Government, Home Department. Ex.P.50 is the response from the office of the Director General of Police on receipt of Ex.P.48, under which re-enquiry was ordered. Ex.P.51 is the communication from the Forensic Science Department of the Commissioner of Police, Coimbatore City. Ex.P.52 is the enquiry report. P.W.48 is the finger print expert of the

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Finger Print Bureau at Coimbatore. As requested by B-3 Police Station, he went to the crime scene on 24.12.1995 to lift chance prints, if available. However during his investigation, he could not detect any finger prints in the crime scene. Accordingly he gave his report Ex.P.53. On 27.12.1995, an ever silver tiffin carrier was given to him for his examination for finger prints. His examination resulted in he taking three chance prints in that container and he assigned the marks "Y.1, Y.2 and Y.3" to those three finger prints. He compared those chance prints with the finger prints of A.4 sent to him by the investigating officer and it revealed that the chance prints tallied with A.4's left hand middle finger, left hand ring finger and left hand small finger. Ex.P.54 is his report in regard thereto. Ex.P.55 is the sheet of paper in which sample finger print of A.4 was sent from the police station. The chance prints in that tiffin carrier were photographed and then compared. Ex.P.56 is the proceedings for taking photographs of the finger prints. Photographs were taken when the articles were sent to him for examination. P.W.48 would state that if the tiffen carrier was washed or wiped then it will erase the finger prints if any available in that tiffin carrier and that when he examined the tiffin carrier it was found to be a clean one with no trace of any food particles. He also found that the tiffin carrier was washed cleanly. The tiffin carrier examined by him was more or less in the same size as that of M.O.12. P.W.49 is the Magisterial Clerk, who speaks about the receipt of Ex.P.57, the requisition given by the investigating officer to subject the accused for medical examination. Ex.P.58 is the proceedings from the Court to the Government Medical College Hospital, Coimbatore. Ex.P.59 is the requisition given by the investigating officer to send the case properties for chemical examination and as an enclosure to Court's letter Ex.P.60, the case properties were sent to the laboratory. Ex.P.61 is the requisition given by the investigating officer to medically examine A.3. Ex.P.62 is the Court's letter sent in that regard to the Government Medical College Hospital at Coimbatore. P.W.50 during the relevant time was also the Magisterial Clerk. Ex.P.63 is the requisition given by the investigating officer to send M.Os.1 to 11 to the laboratory for examination, which were sent as an enclosure to court's letter Ex.P.64. Ex.P.65 is another requisition given by the investigating officer to have the properties examined and they were accordingly sent as an enclosure to court's letter Ex.P.66. As requested by the investigating officer in Ex.P.67, Ex.P.68 letter was sent to the Government Medical College Hospital at Coimbatore. Ex.P.69 is the report from the laboratory at Hyderabad on D.N.A. Finger Print. Ex.P.70 is the letter received from D.N.A. finger print. Ex.P.71 is the requisition given by the investigating

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officer for examination by the Trichy Medical College Hospital. Ex.P.72 is the communication sent by the Court to the Trichy Medical College Hospital and Ex.P.73 is the communication from the said hospital. Ex.P.74 is the requisition given by the investigating officer to send blood for examination to the Government Medical College Hospital, Chennai. Ex.P.75 is the court's letter sent in that regard.

26. P.W.51 during the relevant time was working as Junior Assistant in the office of the Commissioner of Police at Coimbatore. On the request made by the Inspector of Police of B-9 Police Station, leave file of the Senior Grade Constable Natarajan of All Women Police Station, on whose file Crime No.81 of 1995 was pending, was handed over to the Inspector of Police, B-9 Police Station on 15.12.1999. As per the records available in the office of the Commissioner of Police, Natarajan was given leave for twenty four days. Natarajan was relieved on 1.11.1995 and he continued to be on leave for twenty days thereafter. Ex.P.76 is the order. He was again on leave from 11.12.1995 to 22.12.1995 and he rejoined duty in the forenoon of 23.12.1995. Ex.P.77 is the noting in that file. Ex.P.78 is the leave application of Natarajan. Ex.P.79 is the leave particulars of Natarajan. Ex.P.80 is the proceedings on the file of the Commissioner of Police sanctioning leave. Ex.P.81 is the joining report. P.W.52 during the year 1995 was working as a Senior Grade Constable in B-3 Police Station. He was the Station Writer. The Inspector of Police at that time (it is referable to A.6 against whom the case has been split up) called this witness and asked him to give a report that Constable Eswari of All Women Police Station accompanied the dead body of P.W.1's daughter in Crime No.81 of 1995 on the file of All Women Police Station for post-mortem. P.W.52 reduced into writing what the Inspector of Police narrated. Ex.P.82 is that report. On that report P.W.52 was examined by P.W.66 on 10.9.1999. Ex.P.82 is not the report prepared by Eswari. P.W.53 is a driver by profession. He witnessed Rathinam (A.1) signing in English in five papers on 2.10.1999 in B-9 Police Station. Rathinam wrote the alphabets "A, B, C, D upto Z" in five sheets and also wrote the numericals from "0 - 9" . P.W.53 signed as a witness. Ex.P.83 series are the papers containing the writings of Rathinam. P.W.54 in the year 1996 was functioning as Judicial Magistrate No.I, Coimbatore. Pursuant to the orders of the Chief Judicial Magistrate, Coimbatore directing him to record the statement of Sundaram @ Sundarasamy (A.4) concerned in Crime No.81 of 1995 on the file of All Women Police Station, he directed production of the said person in court at 3.00 p.m. on 4.1.1996. Accordingly the said person was produced in his court and verifying his identifying features with the records available and ensuring that except

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the court's staffs, none else is present in court, he examined him with his personal details. When he was further examined, Sundaram said that police had tortured him to give a statement. When further questioned he made it clear that he was beaten by the police to give the confession statement and therefore he is not willing to give any statement. Accordingly P.W.54 closed the proceedings and sent his report Ex.P.84. P.W.55 is Judicial Magistrate No.IV, Coimbatore. Pursuant to the orders of the Chief Judicial Magistrate to examine ten witnesses in Crime No.81 of 1995 on the file of All Women Police Station, he issued summons to various witnesses. On 15.11.1999, seven witnesses were produced and after complying with all the legal formalities, he recorded the statements of those witnesses under Section 164 of the Code of Criminal Procedure. On 16.11.1999 (wrongly typed as 16.11.98) one other witness arrived and he was also examined under Section 164 of the Code of Criminal Procedure. On 22.11.1999 (wrongly typed as 22.11.98) the remaining two witnesses appeared and they were also examined. Ex.P.85 is the proceedings on his file for examining those ten witnesses. On 1.12.1999 further witnesses were examined under Section 164 of the Code of Criminal Procedure, pursuant to the orders of the superior court. Ex.P.86 is the proceedings on his file in regard thereto. P.W.56 is the Head Constable in All Women Police Station/B-3. When she was in the police station on 23.12.1995 P.W.1 appeared before him and gave a statement. Pursuant to the orders of Antony Selvaraj, Assistant Commissioner of Police (Law and Order) P.W.56 proceeded to the crime scene in a police jeep along with another Grade-I lady police constable Eswari. When B.3 Police Station received a statement, it was 3.30 p.m. When P.W.56 and the police party went to the crime scene, there was a huge crowd. P.W.1 was present there stating that her daughter is lying dead in the well. P.W.1 was examined at the spot itself by recording her statement in which, her signature was obtained, after reading it over to her. P.W.56 came back to the police station and pursuant to the orders of the Antony Selvaraj, Assistant Commissioner of Police (Law and Order), that complaint was registered in Crime No.81 of 1995 under the caption "Suspicious Death". She handed over the Express Records to B-3 Inspector of Police Anbazhagan (A.6) at about 6.00 p.m., since her Station Inspector of Police and Sub Inspector of Police have gone to Chennai for South Asian Games. Since in the complaint lodged by P.W.1 no time was mentioned, as directed by the Assistant Commissioner of Police, Law and Order, she mentioned the time in that complaint. To P.W.56's narration, Head Constable Eswari prepared the First Information Report, which is Ex.P.87. Ex.P.88 is the statement of P.W.1 reduced into writing by P.W.56. P.W.66 examined P.W.56 in that connection on 28.8.1999. P.W.56 was examined on

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1.12.1999 by Judicial Magistrate No.IV. P.W.1 gave the statement at the crime scene itself. As directed by the Assistant Commissioner of Police, Law and Order, she gave evidence stating that P.W.1 appeared in the police station and gave the complaint. P.W.57 is a resident of Udayampalayam. On the evening of 23.12.1995, he came to know that in the well near to his house, somebody is lying dead and he therefore reached the well by about 5.30 p.m. There he found the Inspector of Police, Anbhazhagan (B.9 police station). The Inspector of Police asked P.W.57 to stay there to sign as a witness for the recovery of the objects. However P.W.57 did not remember how many times he signed. He admitted his signature in the document shown to him, which is Ex.P.89. M.Os.15,16 and 13 were recovered from the crime spot and in those records he had singed. Exs.P.90 to P.92 are his admitted signatures in those documents.

27. P.W.59 in the year 1995 was Grade I Constable in B-3 Police Station. For his daughter's family function he went on leave for a period of twenty days from 12.12.1995. However as requested by the Inspector of Police, B-3 Police Station he rejoined duty on 23.12.1995. His earned leave was cancelled. At about 3.30 p.m., Anbazhagan, Inspector of Police directed P.W.59 to accompany Head Constable Saraswathi and lady police constable Eswari to a well at Chinnavedampatti where a dead body of a female was found to be inside. Accordingly P.W.59 accompanied P.W.56 and Eswari. Near the well, P.W.56 by examining P.W.1 recorded her statement. P.W.56 and Eswari went back to the police station and P.W.59 stayed at the crime spot itself. At 6.00 p.m. on that evening, Inspector of Police Anbazhagan (B.3 Police Station) came there. At 6.30 p.m. on that day, P.W.59 reduced into writing what the Inspector of Police narrated to him after observing the crime scene. It was in the draft format of a Mahazar. P.W.59 was sent back to the police station at 7.00 p.m. While P.W.59 was leaving the well, he found Ex.M.L.A. Venkutu/ P.W.31 talking with the Assistant Commissioner of Police. In the police station P.W.59 prepared the Observation Mahazar based on the report, which he prepared at the spot and four other mahazars and sent the same to Chinnavedampatti. Exs.P.93 to 97 are the other mahazars. At 10.00 p.m, the Inspector of Police Anbazhagan came to the police station and to his narration P.W.59 reduced into writing the statement of witnesses. P.W.59 also wrote the inquest report. P.W.59 admitted the signature found in the statement of witnesses as his. Those statements are that of the witnesses examined in S.C.No.110 of 1998. Ex.P.98 is the inquest report prepared by him, which he wrote in the police station only. He also prepared the altered express report. On 25th and 26th of that month also he reduced into writing the

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statements of witnesses as narrated by the Inspector of Police in the police station. On 27th, he reduced into writing to the narration of the Inspector of Police, the confession statement of the accused and the remand report. P.W.66, Inspector of Police (B.9 police station) examined him on 9.10.1999. On 1.12.1999 P.W.59 was examined by Judicial Magistrate No.IV. Ex.P.99 is the altered Express First Information Report. Ex.P.17 - the admissible portion of the confession statement of A.4 is written by him. On the day of recording the confession statement P.W.59 saw the other accused in the police station. P.W.59 also saw on the Inspector's table a basket and two tiffin carriers. M.O.8 is the basket and M.Os.11 and 12 are the tiffin carriers, which were on the Inspector's table. They were found cleanly washed.

28. P.W.60 was the professor of Forensic Medicine at Coimbatore Medical College on 24.12.1995. On receipt of requisition Ex.P.100 given by the Inspector of Police, he did post-mortem on the dead body on 24.12.1995. During post-mortem he found various symptoms as noted by him in Ex.P.101, the post-mortem report:-

> "Appearances found at the post-mortem:-
>
> Moderately nourished body of a female finger nails, bluish, conjuntival haemorrhage seen on the left eye. Right eye blackened. Dried blood stains over the face, nostrils mouth, both thighs and external genetalia pubic hair matted together. A Horizontal incomplete ligature mark seen both sides outer aspects and in front of the middle third of the neck measuring 24 x 0.5 cm skin dep with surrounding abrasion. The knot mark not seen. Cresentic shape abrasion seen on the left side chin 3 Nos and right side chin 2 nos.
>
> Multiple irregular abrasions seen on the following regions right side upper chest 3 Nos. Right elbow 2 Nos. Right upper arm 5 Nos. Right forearm 10 Nos. Right wrist 5 Nos. Left elbow 12 Nos. Left Fore arm 12 Nos. Left thigh 1 No. Left knee 6 Nos. Left lef 12 Nos. Left ankle 7 Nos. Right knee 20 Nos. Right lef 10 Nos. Right pubic region 4 Nos. Left pubic region 1 No and left sideback 3 Nos.
>
> No injuris seen on both breasts.
>
> Vaginal orifices dialated, Labia Magora separated (torn). Hymen ruptured, loose and covered with blood clot. Vaginal Orifices admit two fingers.

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Liver, Splen, Kidneys are congested.

Stomach contains 30 ml of turbid Fluid No odour, Mucosa pale.

Small intestine empty. No odour. Urinary Bladder empty. Skull No fracture. Brain congested. Viscera, blood vaginal smear, pubic hair are preserved for chemical analysis. Grouping to identify sperms and micro organism respectively."

Ex.P.102 is his final opinion. The Doctor opined that the deceased would appear to have died of Asphyxia as a result of obstruction to the air passage associated with injuries described in the post-mortem certificate. The Doctor also opined that jute rope shown to him in court, if used, would leave the impression found on the dead body. He also opined that if a person is pushed into a dry well from top, the injuries found on the dead body are possible. However he did not notice any cotton fibres on the body.

29. We have already narrated in the earlier portion of this judgment a part of P.W.62's evidence. On 14.7.1999, P.W.66 came to his office (P.W.62 is the Village Administrative Officer of Chinnavedampatti) and asked him to accompany him in the search to be conducted by him in Sundaram Textile Mill. P.W.62 accompanied P.W.66. Sundarammal, wife of the mill owner refused permission. On being told that there is a search warrant, entry was permitted. From the mill, eleven records were recovered namely, the attendance register (two in number), wages register (two in number); a completely used South Indian Bank Cheque Book; E.S.I. register; an independent ledger and Form 7. From the house two records were recovered. In all thirteen records were recovered in that search. A copy of the search list and the recovered documents were given to the owner's wife under her acknowledgement. On 18.8.1999 P.W.66 again came with witness Ravi/P.W.4 since that witness was ready to demonstrate as to how the occurrence took place. P.W.62 accompanied the witness and the Inspector of Police. The witness identified the place where the occurrence took place and P.W.66 prepared the Observation Mahazar attested by P.W.62 and another. Ex.P.104 is the Observation Mahazar and Ex.P.105 is the search list. P.W.63 is the Scientific Assistant in the Forensic laboratory. The case properties in Crime No.81 of 1995 on the file of All Women Police Station, Coimbatore were received in his laboratory, which were scientifically examined. Ex.P.108 is the report. The laboratory was asked to examine whether there was any semen in the pubic hairs and its blood group. P.W.64 is the expert police photographer. At 10.15 a.m. on 24.12.1995 he received

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information from B3 police station and accordingly he went to the mortuary in the Government Medical College Hospital. Police constable Eswari identified the dead body of P.W.1's daughter and P.W.64 photographed the dead body from different angles at 11.00 a.m. Totally twelve photographs were taken and they are M.O.22 series. Negatives were also attached to M.O.22. He enlarged the various portions of the photographs and highlighted the presence of cotton fibres. M.O.23 series are the enlarged photographs. P.W.65 was the Superintendent in the office of the Commissioner of Police, Coimbatore. He is incharge of sanctioning leave to the Inspector of Police and constables and it is his office, which maintains the records in regard thereto. He had produced the service records of Nataraj (P.W.59). As per the service records, Nataraj went on leave on 11.12.1995 and returned to duty on 23.12.1995. He was on earned leave. Ex.P.109 is the authenticated copy of the relevant page in his service record. Though leave would be sanctioned, yet, whether the said person is to be relieved or not is purely within the discretion of the Inspector of Police of the concerned police station, who depending upon the exigencies and circumstances will relive him. P.W.66 examined further witnesses on several dates by recording their statements. He gave a requisition to the court to examine various witnesses under Section 164 of the Code of Criminal Procedure. On 12.12.1999 he gave a requisition to the court to send for chemical examination, the saliva, blood and semen collected from A.1, A.2 and A.3; already lodged case property namely, the skirt and vaginal swab and two D.N.A. finger print test to the laboratory at Hyderabad. He examined further witnesses on subsequent dates by recording their statements. After completing the investigation, P.W.66 filed the final report in court against the accused under Sections 376, 302, 120-B and 201 I.P.C. M.O.102 is the Observation Mahazar prepared by him on examining the case properties in court. Ex.P.113 is the certificate given by Dr.Madhikaran. All the accused when questioned under Section 313 of the Code of Criminal Procedure, not only denied the incriminating materials put up against them as false and contrary to facts but also stated that the case has been foisted upon them. Neither oral nor documentary evidence was brought before Court at their instance.

30. Learned Additional Public Prosecutor for the State would submit that this is a case where the learned Trial Judge had completely misappreciated the evidence thereby resulting in miscarriage of justice. The reasons given by the learned Trial Judge for disbelieving P.Ws. 4, 5 and 6 – who are key witnesses in this case are not reasons at all in the eye of law. In other words, the reasons given by the learned Trial Judge are

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on surmises and conjectures. If the evidence of P.W.4 is read in it's proper perspective in which it deserves to be read, then no Court of ordinary prudence can reject the evidence of P.W.4. In other words, when the evidence of P.W.4 establishes the involvement of the accused beyond doubt, the reasons which entered the mind of the learned Trial Judge to doubt as to why this witness had not spoken earlier to about the facts which he speaks now, is in total ignorance/failure to take into account the intrinsic materials available in his evidence itself, which undoubtedly establishes that this witness was under constant pressure from his employer and the then investigating officer (A6) at all stages till the re-investigation commenced. In other words, if the evidence of P.W.4 is read in the context of fear – which was put into his mind at all earlier stages by his erstwhile employer and his close associates, then it would not be possible for any Court to reject his evidence. Looking from any angle, the judgment under challenge cannot be legally sustained. Opposing this arguments, Mr.V.Gopinath, learned senior counsel and Mr.K.V.Sridharan, learned counsel for some of the accused would contend that this being an appeal against acquittal, this Court would be reluctant to upset the finding of acquittal rendered by the learned trial Judge on sound reasons. Drawing the attention of this court on the settled position in law the powers which the appellate Court can exercise, while hearing an appeal against acquittal, it is contended that when two views are possible from the same set of evidence and if the lower Court had taken one view, then the appellate Court cannot for the mere reason – it can take another view – can reverse the finding of acquittal. According to learned senior counsel and learned counsel appearing for the defence, the learned Trial Judge had rightly disbelieved the evidence of P.Ws. 4 and 5 – the key witnesses in this case, giving sound reasons. In other words, according to them, the State had not brought out any compelling circumstance to interfere with the judgment of acquittal – which is well merited on its own reasons.

31. Having regard to the submissions made by learned State counsel, learned Senior counsel and learned counsel for the defence, we carefully went through the judgment under challenge. Before proceeding further, we want to remind ourselves that the powers of the appellate Court in hearing an appeal against acquittal stands well circumscribed. Decided case laws have been repeatedly warning that the appellate Court, hearing an appeal against acquittal, for the sole reason that it can take another view from the same set of evidence, it cannot upset the finding of acquittal based on another view – possible on the same set of evidence – taken by the learned Trial Judge. In other words, if the judgment of the learned

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Trial Judge do not suffer from any vices, namely, having offended the well established principles of appreciation of evidence, then it would not be possible for this court to interfere with the finding of acquittal given by the learned Trial Judge. Therefore to find out whether there is any misappreciation of evidence resulting in miscarriage of justice or whether the learned Trial Judge had taken into account any extraneous materials or whether the learned Trial Judge had acted on inadmissible evidence or whether the learned Trial Judge refused to receive evidence admissible in law or ignored legal evidence on record, this court has to necessarily go through the entire evidence placed on record. The power of the Appellate Court is so very wide that it can always re-appreciate the evidence - the only difference being in re-appreciating the entire evidence on record, in hearing an appeal against acquittal, the appellate court should not upset the finding of acquittal rendered by the learned Trial Judge, if it is possible to hold that the acquittal is based on sound reasons. Having the above principles in our mind, let us proceed to examine the prosecution case.

32. In sum and substance, the prosecution case is P.W.1's daughter was raped; murdered and then to screen the offence, the evidence was erased. Even at this stage, we want to note that in respect of the very same incident there was an earlier trial in S.C.No.110 of 1998 on the file of the very same Court of Sessions, in which there was one accused alone put up for trial. In the course of the trial in that case, since witnesses appear to have either turned hostile or deposed that in addition to the person put up for trial, other persons were also involved in the crime, (correct details are not available on record) the present investigating officer sought the permission of the court to re-investigate and on being ordered, re-investigation was commenced by P.W.66 in this case. This court is informed that as re-investigation was ordered, S.C.No.110 of 1998 was not allowed to reach its logical end, by completing the trial and it stood withdrawn. Even in S.C.No.110 of 1998 the final report was filed only under Section 376, 302 and 201 I.P.C. as against the sole accused put up therein for trial. After re-investigation was completed P.W.66 filed the final report in court now against six persons as A.1 to A.6. A.6 is the Inspector of Police by name Anbazhagan, on whose investigation, final report was filed in S.C.No.110 of 1998 against only one accused put up for trial. As noted earlier, after the filing of the final report in the present case against six accused, A.6 - the inspector of police by name Anbazahagan moved the Court of Sessions that there is misjoinder of charges and therefore he cannot be tried in this case namely, S.C.No.96 of 2000. Accordingly on

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merits, the learned Trial Judge passed an order accepting the plea of misjoinder of charges and split up the case against A.6. Therefore the trial against A.6 was proceeded separately, arraying him as the sole accused in S.C.No.214 of 2000 on the file of the very same Sessions Court to face trial under Section 201 of the Indian Penal Code alone. That case also ended in acquittal and the State is before us in a separate appeal challenging that acquittal also. The sole accused put up for trial in S.C.No.110 of 1998 is arrayed as A.4 in the present trial.

33. With this preface, we now proceed to examine the merits of the prosecution case. As stated earlier, the prosecution case is P.W.1's daughter was raped, murdered and then the evidence of the offence was erased. Before proceeding to decide whether the prosecution had established the guilt of the accused or not, we feel that it must be decided first whether the prosecution had established the cause of death of P.W.1's daughter. P.W.60 was the professor of Forensic Medicine in Coimbatore Medical College Hospital during the relevant time. On receipt of Ex.P.100, the requisition given by the Inspector of Police - B3 police station, he did post-mortem on the dead body of a sixteen year old girl on 24.12.1995. Ex.P.101 is the post-mortem report and Ex.P.102 is the final opinion. On a perusal of the post-mortem report, we find that among other places, dried blood was seen on both thighs and external genitalia. In addition to the above, a horizontal incomplete ligature mark was also seen on both sides outer aspects and in front of the middle third of the neck measuring 24 x 0.5 cm skin deep. There was absence of knot mark. There were irregular abrasions, among other places, in the right pubic region (4 Nos.) and left pubic region (1 No.). In the post-mortem report, the following symptoms are also noted:-

> "Hymen ruptured, loose and covered with blood clot. Vaginal orifices admit two fingers."

P.W.60 in his oral evidence before court would state that in the torn hymen blood clot was found. Therefore the above noted symptom coupled with the oral evidence of P.W.60 show that in the torn hymen, blood clot was found. The post-mortem report also shows that vaginal smear and pubic hair were preserved for chemical examination regarding grouping to identify sperms and micro organism. When P.W.60 was further examined in chief by the State he had deposed that since blood clot was found on torn hymen, he was of the opinion that force would have been used. When he was cross examined by the counsel at the instance of A.1 and A.2, he had affirmed that

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the presence of blood clot in the hymen would only show that the wound is of a recent origin. Ex.P.102 is the final opinion issued by P.W.60, which shows that death is due to Asphyxia as a result of obstruction to the air passage associated with injuries described in the post-mortem certificate. Therefore from P.W.60's evidence coupled with Exs.P.101 and P.102 it is clear that death of P.W.1's is not due to natural circumstances.

34. As a follow up to this medical evidence, we want to refer to the evidence of P.Ws.38 and 39. P.W.38 during the relevant time was working as an Assistant Director in the Forensic Science Laboratory at Chennai. On 5.3.1996, he examined twelve articles namely, a half saree, a blouse, bra, inner skirt and inner wear, in which he found human blood. In the blue colour torn inner skirt, human blood was found. In the half saree, bra and blouse, human blood of "O" group was found. In the remaining items, grouping was not possible. His evidence also shows that in the inner skirt, human semen was found. But however blood grouping was not possible. Ex.P.31 is his report, which reflects the above facts. He also examined the vaginal swab sent to him and the examination of the vaginal swab and the sample blood received discloses that in the vaginal swab human blood was found with grouping inconclusive and in the control blood, human blood of "O" group was found. Ex.P.32 is his report. Ex.P.33 is another report sent by the laboratory showing that in the torn blue skirt, on which there were dark brown stains, semen was detected. Ex.P.34 is another report from his laboratory, which shows that examination of the pubic hair of Sundaram (A.4) no semen was detected. This witness was not cross examined at all. P.W.38 examined the incriminating objects scientifically and P.W.60 did post-mortem on the dead body of P.W.1's daughter, when the investigation was under the control of Inspector of Police Anbazhagan (A6). To make it more clear, the evidence of P.W.38 and P.W.60 is with reference to the facts noted by them long before P.W.66 stepped in, pursuant to the order of re-investigation made by the court. P.W.39 is the Scientific Assistant in the Forensic Laboratory. Her evidence had come on record after P.W.66 commenced re-investigation. Her evidence shows that on 1.12.1999 she examined the half saree, blouse, bra, inner skirt, inner wear, nose screw, wire basket, jute rope, thread, hair pin, Titan wrist watch, ear studs, two broken bangle pieces, six broken bangle pieces and beads made of clay with two dollars recovered immediately after the registration of the crime. Her examination revealed that in the inner skirt, nose screw, wire basket and jute rope cotton fibre was detected. Even in the half saree, blouse, bra, inner wear, thread and hair pin, cotton fibre was found. Ex.P.35 is

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her report. We find that this witness was also not cross examined. The learned trial Judge, in finding whether the prosecution had established the cause of death in this case, had gone through the evidence of P.W.60, the Doctor who did post mortem; the post mortem report (Ex.P.101) and his final report (Ex.P.102). We have already noted earlier as to what they disclosed. The learned trial Judge then proceeded to comment that P.W.60 did not depose that the injuries found on the dead body were ante-mortem or post mortem and the post mortem report itself does not contain any such finding. The learned trial Judge also commented that P.W.60 was not examined to elicit as to the manner in which the strangulation could have been done leading to the death of the deceased. The learned trial Judge also took note of the admission of P.W.60 that in the final report given by him and marked as Ex.P.102, he had not noticed as to whether the victim was subjected to any force and violence. Then, the learned trial Judge, going by the evidence of P.W.60 to the effect that if a person is thrown into a dry well more injuries are possible, proceeded to comment that on the facts available in this case, it is not possible to even infer that the body was lowered down into the well by more than one person or was it thrown into the well by a single accused. The learned trial Judge also excluded the case of the prosecution that using a rope the dead body would have been lowered down into the well since, if really that was the exercise done, then atleast a part of the rope would have been available on the dead body itself inside the well and the presence of rope inside the well is not established at all. The learned trial Judge had analysed the cause of death in paragraph 49 of her judgment and appears to have concluded (no clear finding is given) that the cause of death is not established. In our considered opinion, we have no doubt at all that the learned trial Judge had misdirected herself in reading the medical evidence available on record in this regard. P.W.60 noted a ruptured hymen covered with blood clot. His oral evidence is that, the presence of blood clot on the torn hymen indicates force and violence having been used. The defence elicited in cross examination that the presence of blood clot on the torn hymen indicates that the injury is of a recent origin. P.W.38's evidence coupled with Ex.P.31 (report) shows that in the inner skirt of the victim, semen was found. Ex.P.33 is another report from the laboratory disclosing that in the torn blue skirt there were dark brown stains and semen was detected. Ex.P.32 is another scientific report, which shows that in the vaginal swab human blood was found. Therefore without any hesitation we hold that the symptoms noted by the Doctor in the post mortem report; his final opinion; his evidence in court and the scientific experts' evidence and their report referred to above, leave no scope at

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all to doubt the cause of death as due to homicidal violence. The presence of semen in the inner wear of the victim and the presence of human blood in the vaginal swab indicate that the victim was subjected to sexual assault and medical evidence establishes that going by the injury noted on the torn hymen, it must be concluded that the assault must be of a recent origin. Simply because there is no evidence to show, either from the evidence of P.W.4 (eye witness) or from the evidence of the Doctor (P.W.60), who did post mortem, in what mode the victim was strangulated, it is not possible to hold that the victim was not subjected to a sexual assault and the cause of death is not due to asphyxia. It is always open to the court to go by the symptoms noted, both medically and scientifically, to conclude what would be the cause of death. On the facts noted above, we find that the prosecution had definitely established medically and scientifically that the victim was subjected to a sexual assault and her death is not due to natural circumstances. When such is the overwhelming evidence, the learned trial Judge completely erred in law and on facts going by surmises and conjectures (See paragraph 49 of the trial court judgment) in holding that the prosecution had not established the cause of death. This conclusion is definitely erroneous and such conclusion arrived at by the learned trial Judge could not be arrived at at all by any court of ordinary prudence. In the light of our above referred to discussion in the context of the evidence of P.Ws.38, 39 and 60 and the respective reports issued by them, we have no hesitation to conclude that the victim was subjected to a sexual assault and her death is due to homicidal violence.

35. The entire prosecution case, if we may say so with certainty, rests only on the oral evidence of P.Ws.4 and 5. P.W.4 had been examined to prove (he was also examined in S.C.No.110/1998 on the file of the very same court when A4 in the present case alone was put up for trial in that case for the very same offences) that he saw P.W.1's daughter being raped by A1 despite her protest; under the pretext of she being unconscious, with the help of P.W.4, she was taken to the adjoining room to make her lie down and then the dead body was taken out of the mill premises. P.W.5 had been examined to prove that he saw A1 and A4 taking P.W.1's daughter with hand support; A2 following them and throwing the dead body into a well. It is needless to state that if the evidence of these two witnesses deserve acceptance and their evidence do not lead to any other hypothesis than the guilt of the accused, then the prosecution must succeed. Under these circumstances, we have decided to analyse the evidence of these two witnesses separately and the reasons given by the learned trial Judge for disbelieving them. Let us first hereunder do that exercise as

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far as the evidence of P.W.4 is concerned.

36. We have already extracted in extenso in the earlier portion of this judgment as to what P.W.4 spoke in court. Just to recollect our memory, we state hereunder in sum and substance what his evidence is:

> "Being a Friday, taking money from the owner of the mill, he went out to buy coconut and plantain; A1 called him and giving him a sum of Rs.10.50, asked him to get a packet of cigarette; when he was out of the mill, he saw P.W.1's daughter going towards the mill for full night shift; he returned from the shop and gave the balance money to the owner of the mill; after parking his cycle, he was about to put his foot into the spinning section; at that time he saw the wire food basket of P.W.1's daughter at the threshold; he had gone a couple of steps inside and A2 came opposite to him from inside; this witness and A2 were standing facing each other and at that time the witness heard the voice of P.W.1's daughter (we are avoiding mentioning the name of the rape victim); when asked as to what it is about, he was answered that it is nothing; when the witness again insisted, he was answered that he (referable to A1 only) is doing like that; witness asked as to how they could say like that, for which the answer was that he (A2) would take care of the situation and that the witness can go to his section and watch out for any people coming that side; to note what they are doing; the witness went through the second gate and near the pooja room in the spinning section, he saw the person standing against the wall; A2 was also there; there is a window opposite to the pooja room; there A1 was doing P.W.1's daughter; she protested expressing her fear, for which, A1 assured that as long as he is there, there is no need for her to fear and that nothing would happen; A2 called this witness once again and told the witness that as the boss (A1) had done it, the girl had become unconscious; the witness asked him as to what should be done, for which, A2 asked the witness to assist him in taking the girl to make her lie down in the bed room; when he went, he found, at the entrance door of the spinning mill, the girl leaning on the person of A1, who was holding her; A3 was also there; A2 asked the witness to catch hold of the legs and accordingly he caught hold of the legs; A1 and A2 each gave support to the victim on either side of her shoulders and then all took the

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girl to the bed room, where, she was made to lie down; emergency light alone was burning; A2 and A1 closed the screen; the witness came out; A3 entered when the witness was proceeding towards his machine; A4's younger sister came in a cycle; the witness entered the spinning room and he did not find the wire food basket of P.W.1's daughter; A2 called the witness and told him that the witness must stand in his Department to watch the movement of any people; A1, A2 and A4 took the girl from the bed room; A3 went ahead of them; he (A1) told this witness that because he (the person is traceable to A1) did like that to the girl, she died; the witness told the person, calling him as "Anna" (he refers to A1), that he was given to understand that the girl would be woken up later since she was made to lie down in the bed room as she was unconscious; A2 said that they would manage everything and threatened the witness that if he discloses that to anyone, his (the witness) mother and his entire family would be destroyed; the witness prostrated and assured that he would not tell anybody; A3 went out first followed by A1, A2 and A4 taking the victim with them; on the right side of the road leading to Chinnavedampatti, there is a wild growth of herbs and shrubs; they went only that side; there is a transformer and A3 took a roll of rope from the factory."

It may be noticed here that even in S.C.No.110/1998, which was ultimately withdrawn consequent to the re-investigation ordered resulting in the final report filed in the present sessions case, the sole accused, who is A4 in the present sessions case, was tried under sections 201, 302 and 376 I.P.C. This witness was also cited as a witness in that sessions case. Therefore the prosecution case that the girl was raped, murdered and the evidence of the offence was screened, is the same in both the cases. Before going through the reasons given by the learned trial Judge for disbelieving the evidence of P.W.4, we will also summarise hereunder as to what he said in court when he was cross examined by the accused:

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"I told P.W.1 about the occurrence for the first time within four or five months in the year 1995; but however, I do not remember how many days after the occurrence I told her about it; there are two communist party M.L.As in our town and P.W.1 did not take me to them after I told her about the incident; I did not tell anybody else other than P.W.1; I did not tell

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anybody about this from 1995 till 1999; I did not tell anybody that after the incident the accused were threatening me from 1996 till 1999; till the crime was completed, the owners namely, mother and father of A1 and their relative were standing near the building itself; the incident took place 200 feet south of that place; from the coding section the place of occurrence cannot be seen; only from the spinning room it can be seen; it is correct that women used to work in coding and spinning sections; A2 did not allow me to enter the spinning unit and he asked me to go to coding section; A2 was standing guard there till the end; from the coding section, it is not possible to hear any noise emanating from the spinning section; I know that the victim died on the same day in the mill premises itself; but however, since I was informed that she was only unconscious, I helped in taking her to the bed room; when I deposed in court earlier, B3 police station was in-charge of investigation; I gave evidence on 11.11.1998 in S.C.No.110/1998; on that day, Sundarasamy (A4 in the present case) alone was the accused; only in the year 1999, I told B9 police station (P.W.66) that P.W.1's daughter was in the mill on that day; I did not inform CBCID on 06.04.1996 "that I saw the occurrence; A1 had intercourse with P.W.1's daughter guarded by the other accused and I was threatened since I was asked to tell what I had already told B3 police station;" B3 police station is in Coimbatore and to reach Coimbatore town from my village, I have to pass B3 police station; I have gone via B3 police station for the past several years." (A1 and A2's cross examination)

"P.W.66 alone examined me and the rest have wrote a statement on their own." (Cross at the instance of A3)

"I deny that P.W.66 brought me to the court to give evidence on 11.11.1998; but however, it is only the owner who brought me to the court; my owner told me in the car that I must tell what I have told in B3 police station; after the incident I used to talk with my co-workers; but however, I always would have a limited talk; during those conversations, there will be a talk

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on the death of the victim in this case; but whenever that topic is opened, I used to stop and then say that I do not know anything about that; I deny that the communist party leader took me to the CBCID office (P.W.61 - CBCID Inspector); but however, the owner alone took me there." (Cross at the instance of A4)

"I was highly disturbed after the incident." (Cross at the instance of A5).

37. The question that follows is, whether in the face of the evidence of P.W.4, both in his chief examination and in cross examination, could the reasons given by the learned trial Judge for disbelieving him can be said to be plausible reasons or are they palpably wrong ? Now let us go into the reasons given by the learned trial Judge. In sum and substance, the learned trial Judge had decided to disbelieve the evidence of P.W.4 mainly for the following reasons:

"P.W.4 was totally silent about the incident till the re-investigation was done by P.W.66; there was utter darkness at the time when the crime is shown to have been committed and therefore it would not have been possible for P.W.4 to witness the crime; installation of the machines inside the mill premises would have definitely obstructed / would not have enabled P.W.4 from viewing the crime; when the dead body was moved out of the mill premises, everyone would have been in a position to see and therefore the accused would not have dared to take the dead body out of the mill premises as spoken to by P.W.4; the conduct of P.W.4 before, during and after the occurrence, if taken into account together, would show that P.W.4 could not be an eye witness at all; till the crime was committed, there was no threat at all to P.W.4 to act in any particular manner; P.W.4's evidence shows that for concealing the dead body, the witnesses have taken a longer route than the shorter one available, which is against the normal conduct of any offender; P.W.4 was calm and composed at all times prior to the occurrence; during the occurrence and immediately after the occurrence and even after the occurrence till such time re-investigation commenced; if really P.W.4 informed P.W.1 within five or six months after the crime about

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the incident, then in Exs.P.1 and P.21, the names of all the accused are not mentioned; though the silence on the part of P.W.4 could be appreciated so long as he was under the employment of the offender i.e., till Deepavali 1996, his continued silence thereafter till re-investigation commenced would go against his oral evidence before court now; if really P.W.4 was under threat from any quarters, then, there is no reason as to why he chose to implicate A4 at the first instance; the evidence of this witness in S.C.No.110/1998 eliminating the presence of P.W.1's daughter in the mill premises during the occurrence time would doubt his evidence now that the victim was present in the mill premises at the occurrence time; the prosecution had not established the presence of P.W.1's daughter inside the mill premises and for this reason the learned Judge was not inclined to believe the evidence of P.W.1".

38. Let us now first take up the conclusion arrived at by the learned trial Judge that the prosecution had failed to establish the presence of P.W.1's daughter in the mill premises. In paragraph No.27 of the judgment in challenge alone, we find that the learned trial Judge had discussed this point. The learned trial Judge, after holding as hereunder,

> "Though the evidence of the mother Packiayam (P.W.1) to the effect that she left the victim near Salai leading to the mill and she came back home need not be disbelieved"

proceeded to hold that her evidence cannot be safely accepted to prove the presence of the victim inside the mill premises. The question is, whether such a conclusion can be arrived at based on the materials available on record? Even at this stage we wish to point out that the learned trial Judge had totally failed to advert to the oral evidence of P.Ws.2 to 5, 13, 34, 35 and Exs.P.25 to P.27 in this regard. P.Ws.34 and 35 are official witnesses. P.W.34 is working in the Employees' State Insurance Corporation over 25 years and he writes ESI Accounts. He would depose that from the year 1992 to 1996, he had written the accounts of Sundaram Textiles (Sundaram Textiles is the mill where P.W.1's daughter is stated to be working). His evidence shows that he wrote Ex.P.25 (Wages register). Ex.P.26 is the leave with wage register maintained by him for that mill. Ex.P.25 is for the month of November 1995, which discloses that P.W.1's daughter (serial No.8) had

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worked for 18 days in the mill in November 1995. Ex.P.26 is the leave with wages register relating to the deceased herself and it shows that in December she had worked for 18 days in that mill. Ex.P.27 is another register maintained by him, which gives the details of the employees who left the job. Ex.P.27 shows that the victim in this case worked in the mill for 25 days in October 1995; 26 days in November 1995 and 18 days in December 1995. P.W.35 is the Inspector of Employees' State Insurance Corporation, who would state that he inspects the attendance register; wages register; Form VII registers and challans in Sundaram Textiles and he had authenticated Ex.P.27 on 22.04.1996. Therefore, by official witnesses and statutory records, the prosecution had definitely established that the deceased in this case was an employee in the mill till December 1995. Of course, from the registers referred to above, it is not possible to conclude the days on which the deceased attended the mill. In other words, it only shows the total number of her working days in the mill. When once it is established that the deceased was an employee in the mill, then, when this court examines the issue as to whether the deceased was actually working in the mill on the date of the occurrence namely, on 22.12.1995, it has to be decided not only by the direct evidence available on record but also on preponderance of probabilities. P.W.1 is the mother of the victim. In her evidence in chief she would state that she left her daughter for the work and then returned home. In the cross examination done at the instance of A1 and A2, she had asserted that she left her daughter inside the mill and then only left. P.W.2 is another lady, who would state that on the occurrence day evening, P.Ws.1, 3, the deceased and others came to her house and then they left for work. P.W.3 is a co-worker of the deceased. Her evidence shows that her aunt (P.W.1) took her daughter (deceased in this case) for leaving her in the work place and she, the deceased and two others went to work. P.W.3 had not been cross examined at all. In addition to the above, we have the evidence of P.W.4, whose evidence shows that the deceased was in the work place on that date and P.W.5's evidence is that, he saw the victim being moved out of the mill premises by the accused. Neither to P.W.4 nor to P.W.5 a suggestion is made by the defence that the deceased in this case was not working in the mill on the date of the occurrence. In addition to the above, we have the evidence of P.W.13, whose niece is the deceased in this case. She would also state that between 5.45 and 6.00 p.m on 22.12.1995, P.W.1 left her daughter (deceased) in the mill and then returned. When she was cross examined by A1 and A2, she affirmed that she physically saw the victim going for work on that date, since she left telling her that she is going for work. But we find from paragraph No.27 of the judgment in challenge that the

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learned trial Judge had not even adverted to the oral evidence of P.Ws.2 to 5, 13, 34 and 35 and the statutory records while she decided to disbelieve the presence of the victim in the mill premises on the occurrence day. The learned trial Judge, to arrive at the conclusion that the prosecution had not established the presence of P.W.1's daughter inside the mill premises, relied upon Ex.P.87 namely, the printed first information report in Crime No.81/1985, to which P.W.1 is the author, wherein, she had stated that she left her daughter to go to her work near the Salai (farm house), which is close to Sundaram Waste Cotton Mill. The learned trial Judge, on the above contents found in Ex.P.87, appears to have thought that from that place the victim in this case could not have entered the mill. Therefore the conclusion arrived at by the learned trial Judge that the prosecution had failed to establish the presence of the victim on the occurrence day in the mill premises, is in total disregard to the oral evidence of P.Ws.2 to 5 and 13. Inasmuch as the official witnesses namely, P.Ws.34 and 35 and the statutory records (Exs.P.25 to 27) establish that the deceased was working in the mill as referred to earlier for so many months, then, the only conclusion that could be arrived at on the basis of the evidence of P.Ws.2 to 5 and 13 is that the deceased was present in the mill premises on the occurrence day evening.

39. In addition to the above, we have the following materials also to establish the presence of the deceased in this case in the mill premises. There is no dispute that Sundaram Mills is a waste cotton mill. P.W.39's (scientific expert) evidence shows that in the skirt, nose screw, jute basket, rope, a multi-coloured skirt, half saree, blouse, brazier, inner wear, thread and hair pin, cotton fibre was found. Ex.P.35 is her report. P.W.39 had examined the records, which have already been recovered when the crime was registered when Inspector of Police - Anbazhagan was in-charge of investigation and forms part of the records. Those incriminating objects were received in the laboratory on 01.12.1999. This witness is not even cross examined. P.W.64 is the police photographer. He had photographed the dead body at about 10.15 a.m on 24.12.1995 on receipt of the requisition for the same from the then Inspector of Police - Anbazhagan. M.O.22 series are the photographs. They form part and parcel of the records collected by the then Inspector of Police. He had enlarged M.O.22 series and M.O.23 series are the enlarged photographs of M.O.22 series. We perused M.O.23 series (enlarged photographs of M.O.22 series) and we do find white objects found stuck to the wearing apparels found on the dead body. Therefore if we read P.W.39's evidence coupled with Ex.P.35; the evidence of P.W.64 and peruse M.O.23 series, it

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goes without saying that cotton fibre was found on the wearing apparels found on the dead body at the time when it was retrieved and photographed. P.W.1 also in her evidence had stated that she found cotton on her daughter after it was retrieved from the well. P.W.64's evidence establishes beyond doubt that he photographed the dead body in the mortuary in the hospital. Presence of cotton fibre on the wearing apparels of the victim in this case definitely indicates that but for her presence in the mill premises on the day of occurrence, she could not have come into contact with cotton and cotton fibre. It must be noticed here that when P.W.64 took M.O.22 series - photographs, P.W.66 was not even in the picture and therefore introducing cotton fibre in the personal wearing apparels of the deceased by P.W.66 stands totally ruled out. P.W.64's evidence shows that for taking M.O.23 series - photographs, he collected the negatives from the court. M.O.8 is the wire basket. M.Os.11 and 12 are the ever-silver containers. P.W.1 had identified M.Os.8, 11 and 12 as the belongings of her daughter. She had also stated that her daughter carried M.Os.11 and 12 and M.O.8 is the tiffin box wire basket. This evidence had not been challenged at all. P.W.4 in his evidence had stated (see page Nos.16 and 23 of the paper book) that when he entered the mill premises, he saw M.O.8 just at the threshold of the mill and when he went out after P.W.1's daughter was taken to the bedroom as referred to earlier, he did not find M.O.8 in the mill. Once again we find that this evidence of P.W.4 had not been challenged at all. P.W.25's evidence shows that when he went to the police station in the month of December 1995 when the investigation was under the control of the then Inspector of Police Anbazhagan, he saw M.Os.8 and 12 on the police Inspector's table. The above referred to material namely, the presence of M.O.8 in the mill premises and the evidence of P.W.1 showing that her daughter took M.Os.11 and 12 with her on the day of the occurrence and M.O.8 is the wire basket, we have no doubt at all that this would also establish that P.W.1's daughter had entered the mill premises. Therefore the above referred to materials, which we have discussed, had not been adverted to at all by the learned trial Judge in concluding that the prosecution had failed to establish the presence of the deceased in the mill premises on the occurrence day and therefore that conclusion arrived at by the learned trial Judge is against the evidence available on record or in total disregard to the legal evidence available on record. Consequently, we hold that the prosecution had established the presence of the deceased in the mill premises at the occurrence time.

40. Now let us analyse the reasons given by the learned trial Judge for disbelieving P.W.4. In paragraphs 28 to 41 of

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the judgment in challenge, both inclusive, the learned trial Judge had proceeded to analyse the evidence of P.W.4 and had given her reasons for not believing him. The sum and substance of the reasons given by the learned trial Judge for not believing P.W.4 are as hereunder:

> (a) P.W.4 had come out with the present version almost four years after the occurrence for the first time only during the re-investigation done by P.W.66;
>
> (b) when there are other lady workers in the mill, A1 would not have ventured to rape the victim;
>
> (c) when there was utter darkness (admittedly there was power failure) how could have P.W.4 witnessed the crime?;
>
> (d) when so many machines are found installed in the mill premises in between the place where the occurrence is shown to have taken place and the place where P.W.4 claims to be standing, how he could have seen the occurrence?;
>
> (e) when the dead body was moved out of the mill premises, many people could have been outside the mill premises and therefore, taking the dead body without being noted, is totally impossible;
>
> (f) there is no reason as to why the accused should take a longer route (learned trial Judge reads that into the evidence of P.W.4) while a shorter route to the well is available;
>
> (g) the conduct of P.W.4 during the occurrence and immediately after the occurrence; and
>
> (h) lastly, the conduct of P.W.4 after the occurrence.

It is true, as rightly commented by the learned trial Judge that P.W.4 had come out with the present version as he spoke in court only for the first time when P.W.66, with the permission of the court, commenced re-investigation. It is an admitted fact that P.W.4's evidence in the earlier Sessions trial was recorded on 11.11.1998. P.W.66's evidence shows that, after getting permission to re-investigate, he examined P.W.1 on 29.06.1999. Therefore the re-investigation effectively commenced only from 29.06.1999. The occurrence was on 22.12.1995. It is not as though P.W.4 is now only projected as the eye witness to the crime. But on the other hand, even in S.C.No.110/1998, he was projected as an eye witness to the crime, of-course, the sole accused at that stage being the present fourth accused. Therefore the prosecution is not introducing P.W.4 as an eye witness for the first time. We have already extracted, while discussing this case, the evidence of P.W.4 in chief and cross. It undoubtedly

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establishes the involvement of A1 in raping the victim; moving the raped victim to the bed room on the pretext that she is unconscious and then moving the dead body, making it appear as though there is nothing unusual, out of the mill. In other words, the evidence of P.W.4, as it stands today, establishes the crime. The fact remains that he was put up as an eye witness to the very same crime in S.C.No.110/1998 to speak against the sole accused in that sessions case namely, A4 in the present case and since he did not support the prosecution case, he was treated as hostile. His admission in that evidence elicited in the cross examination that in the mill in which he is working there is a muster roll, had been marked as Ex.D.1. It must be noticed that P.W.4's evidence as such in S.C.No.110/1998 had not been marked in this case. Unless his entire earlier evidence as recorded in S.C.No.110/1998 is put to him and he is cross examined on that basis, his evidence recorded in the earlier sessions case shall not form part of the evidence in the present case. Therefore his evidence in the earlier sessions case cannot be looked into. Of-course, as rightly contended by the learned defence counsel and found by the learned trial Judge, P.W.4 is admittedly speaking the present version of the prosecution case only now. Therefore the question that follows is, whether the evidence of P.W.4 should be simply disbelieved on the sole ground that he had not come out with the present version when the trial went on in S.C.No.110/1998? The learned trial Judge herself had found in paragraph No.36 of the judgment as hereunder:

> "The silence on the part of P.W.4 could be appreciated so long as he was under the employment of the so-called offender i.e., till Deepavali 1996; but his failure to disclose to anyone even after he is freed from the clutches of the so-called offender, is not at all explained; it is not his case that even while he was under the employment and after he left the employment of Sundaram Textiles, he was under constant threat by either of the accused; on the contrary, he was allowed to go and come on his own and his evidence shows that to reach Coimbatore town from his village, he has to necessarily pass through B3 police station (investigating police station originally) (emphasize supplied by us)."

Therefore the learned trial Judge herself is conscious to the fact that if P.W.4 was prevented by sufficient cause from coming out with a true version of the prosecution case, then, his evidence can be accepted.

41. Let us now find out from the evidence of P.W.4 as to

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whether he was under any compulsion at any point of time to speak other than the truth. We hereunder extract the relevant portions in his evidence in this regard. Before extracting the relevant portions of his evidence, we want to understand the character of this witness. He appears to be a timid person. On the day when he gave evidence in court in 1998 in S.C.No.110/1998, he was hardly 20 years of age. Therefore he would have been 17 years of age or so on the date of occurrence. He appears to be such a shy person that he does not even express in court by clear words that the victim was raped. From his evidence we find that he is avoiding any expression on sex and sexual activities. Therefore it is clear that P.W.4 is such a timid and shy person. We now extract his evidence.

> "He told me that since he did like that to the girl, she died; I asked him, (addresses him as Anna and he refers to A1), why he is saying like that, since I was informed that she was only unconscious and if she is allowed to rest in the bedroom, she would get up on being woken up; I asked them again as to why they are saying like that; for that, A2 answered that they would manage everything and if I disclose this to anyone, my mother and my family would be totally destroyed; I prostrated on their legs and assured that I will not divulge the crime to anyone."

> "Because of the incident in the mill, I could not sleep in the night; next day at 3.30 p.m (23.12.1995) when I reported for duty, I noticed a crowd near the well; P.W.1's mother was weeping and asked me as to whether I know anything about the incident; words were in my mouth to disclose; but fear of A2 was in my mind and accordingly, fearing him, I went to the mill; mill was not running; I came out of the mill along with a co-worker and wanted to go to the well; in the road, the lady (owner), A1, his sister's husband and others were there; they prevented us from going to that place and directed us to go via Subbanaickanur and accordingly I went to my house."

> "On the following Sunday (24.12.1995), I was called for by the mill owners and I went; A2's father and others were there; they took us in their car to the police station; en route I was told that if I am enquired about the incident in the mill, I must say that I do not know; I was taken to B3 police station;

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I was standing outside; P.W.1 was standing on the other side; she called me and when I was about to move, father lifted his leg to kick me and therefore I did not proceed further; I was called inside; A1 and A2 came out; Anbazhagan – Inspector of Police – A6 was there; he asked me whether I am by name "Ravi" and I answered in the affirmative; he asked me whether I saw P.W.1's daughter (deceased) while I came back from the tea shop; I did not know what to say and therefore I hung my head down; on police calling, A4 came inside; when I was enquired by Anbazhagan – Inspector of Police, A1, A2 and their relatives were there; two days later, I was taken to the upstairs of the police station; I was in the police station for two or three days; I was taken to a room in the upstairs of B3 police station; A1, A2, A2's father and A2's sister's husband were there; Inspector of Police – Anbazhagan asked me whether I know to read and I said "yes"; then they gave me a paper containing a written material and asked me to read; I read it twice or thrice; they told me that wherever I am asked, I must say only what is stated in that petition and if I don't, I will also be locked up along with Sundaram (A4); Anbazhagan – Inspector of Police threatened me like that; I nodded my head and signed; my owner brought me to my house and left."

"Five or six months later, A1 told me that CID police are summoning me; I went in the car along with A1, A2 and P.W.6; the owner came with another lady in another car; on the way A2 told me that I must tell what I have already told the police, as otherwise, I would also be put inside and I would be tortured by the police by using stationery pins; I agreed and then appeared before CID police; there were two or three persons; they asked me about my details; I told them that though I loved the deceased in this case, she was not responding and that she did not come for the job; they asked me as to who did the crime and at that time A1 and A2 were by my side; I said I do not know and then left."

"Two days prior to the court proceedings, I was taken to meet the lawyer; I went to the remand court; I was asked to sign; two days prior to that, A1 took me to the lawyer; the lawyer asked me whether I am "Ravi" and I answered "Yes"; he told me that there need not be any connection between me and the crime;

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I need not have any connection with my boss and whatever is asked in court, I must say that I do not know; promising to say so, I left; I was taken to the court in a car; I was made to sit away from the eyes of the police; on being called, I entered the court; I was asked to tell the truth; I came to the same court; I told the court at that time that I did not report for duty and that I did not see anybody while returning from the shop."

(The above referred to extracted evidence is in his chief examination).

When he was cross examined at the instance of A1 and A2, he had admitted that from the year 1995 till the year 1999, he did not complain to any officer about the incident and that he did not disclose that after the occurrence from the year 1996 till 1999, the accused had threatened him. He had also admitted that only after re-investigation commenced, he gave the present details and that he did not tell on 06.04.1996 when CBCID police examined him that he saw A1 raping the victim with the other accused standing guard and since he was threatened, he did not tell the truth. He had added that since he was asked to repeat what he had already told B3 police station, he said so. He again affirmed, when he was cross examined by A4, that when he was travelling in his owner's car, he was told that he must repeat what he had already told B3 police station and accordingly he stated so before the CBCID police. He had further affirmed in such cross examination that among the co-workers there would be often talk on the incident and whenever the topic opens, he would just stop and he would state that he did not know anything about the occurrence. He again affirmed in the court in such cross examination that his owners only had taken him to the CBCID police.

42. As noted in the earlier portion of this discussion, the learned trial Judge found that P.W.4 might have been under the control of his employer till Deepavali 1996. We do not know from where the learned trial Judge fixes this date. We have already noted that P.W.4 was examined in S.C.No.110/1998 on 11.11.1998 and the relevant portion of the evidence of P.W.4, both in chief and cross, shows that even till that date namely, the date on which he had gone to give evidence in S.C.No.110/1998, he was under the watchful eyes of his employers in particular reference to A1, A2 and A1's mother. This witness is an illiterate. He is on daily wages. We have already found that this witness is timid and shy. Once we conclude that this witness was under the watchful eyes and surveillance of the offenders and their relatives and we see

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every reason to hold so because of the materials noted earlier, then we cannot find fault with this witness in not coming out with the true version any time prior to 11.11.1998. He appears to be a rustic villager and the fear put into his mind would have been ruling him all the time. After the order for re-investigation, P.W.66 examined P.W.1 on 29.06.1999 and thereafter further witnesses were examined. He had even stated at the fag end of his chief examination, when during re-investigation P.W.66 asked him to tell the truth, he told him that he is afraid and when P.W.66 assured that whatever that may come he would take care of it, he agreed to tell the truth. Therefore the learned trial Judge's repeated comment that P.W.4 had ample opportunity to disclose the crime to anybody whom so ever he may like, is not based on the evidence on record. We reiterate that from 22.12.1995 till 11.11.1998, on which day P.W.4 was examined in S.C.No.110/1998, he was not a free bird and he was definitely under the watchful eyes of the offenders. The conclusion of the learned trial Judge that since from Deepavali 1996, P.W.4 was free to move about, he could have disclosed the crime to someone, is inconsistent with the evidence of P.W.4 that the offenders were controlling him till 11.11.1998. Therefore the one reason on which the learned trial Judge rejected the evidence of P.W.4 namely, his delayed disclosure, is no reason at all in the eye of law and accordingly we reject it. P.W.4's evidence establishes not only the crime but also the fact that he could come out with the truth only when P.W.66 enquired him after the commencement of the re-investigation.

43. The second reason given by the learned trial Judge is that, when there are other lady workers, A1 could not have ventured to commit the crime. For this purpose the learned trial Judge relies upon the evidence of P.W.4 when he was cross examined by A5 wherein, he had stated that between 4.00 p.m till 12.00 p.m in the night on that day four ladies were working there. The question is, whether those ladies knew that A1 committed the crime or was A1 committing the crime in an area, which is in close vicinity to the area where those people were working. We searched in vain the entire evidence of P.W.4 to find out an answer on the above issue and we find that there is no material, from which, we could hold that the place where A1 is shown to have committed the crime is either in close vicinity to the place where the lady workers were working or the lady workers either had knowledge or even had a chance to infer that A1 was committing a crime at that time. The learned trial Judge comment in this context that the police officer ought to have recorded the statements of those lady workers and the failure to record the same is fatal, do not sound to reasons at all. In saying so, the learned trial Judge

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failed to note that the investigation was not at all proceeding on the right lines when the Inspector of Police Anbazhagan (A6) was at the helm and therefore the present police officer namely, P.W.66 cannot be found fault with for such failure. Even otherwise, we find that the conclusion arrived at by the learned trial Judge that A1 could not have committed the crime when other lady workers were there, is purely on surmises and conjectures, when, as already noted, there is nothing on record to show that those lady workers had a chance to even infer that a crime was being committed. Though P.W.4 had admitted that between 4.00 p.m and 12.00 p.m in the night on that day lady workers were working, there is nothing on record to show that they were actually working inside the mill at the time when the crime was committed. Those lady workers could not have also worked since, admittedly there was power disruption and as per the evidence of P.W.4, emergency light alone was burning. Therefore in all probability, those lady workers could have gone outside the mill waiting for restoration of the power supply and we have no doubt at all that the reason given by the learned trial Judge to hold that A1 could not have committed the crime when so many lady workers were there, is without any basis. The next reason given by the learned trial Judge for disbelieving the prosecution case is that, when there was no electricity supply, how P.W.4 could have seen the crime?. This conclusion is in total disregard to the evidence of P.W.4, who would state that the emergency light, which will start burning whenever there was power failure, was on. He had stated not only in his evidence in chief but also when he was cross examined by A1 and A2 that except the lamp in the bedroom, there was no other light. The case of the prosecution is that there was power disruption in that area for almost an hour and it was restored only thereafter and A1 had committed the crime only during that period. Inasmuch as, P.W.4's evidence establishes beyond doubt that there was an emergency light burning in the factory, which evidence remains unchallenged, the reason given by the learned trial Judge that as it was dark, P.W.4 could not have witnessed the occurrence, is against legal evidence on record.

44. The learned trial Judge had admittedly conducted spot inspection, as noted by her in paragraph No.31 of the judgment in challenge, after the trial commenced. In other words, the learned trial Judge had visited the crime scene during the trial and observed the various ground realities available in the mill premises on such inspection. In 1985 SCC (Crl.) Pg.446 (Keisam Kumar Singh & Another Vs. State of Manipur), the Supreme Court had held as hereunder:

"Normally a court is not entitled to make a

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> local inspection and even if such an inspection is made, it can never take the place of evidence or proof but is really meant for appreciating the position at the spot. In the present case the Sessions Judge by making a local inspection converted himself into a witness in order to draw full support to the defence case by what he may have seen. By doing so the Sessions Judge exceeded his jurisdiction."

During such local inspection, the learned trial Judge appears to have had a bird's eye view of the lie of the factory; the different sections of the factory; the entrances/exits; installation of the machinery inside the factory and the distance between one place to another inside the factory. The learned trial Judge also had observed the physical features available outside the factory. Then the learned trial Judge proceeded to hold, on her observation of the mill premises on such local inspection, that there was no pooja room at all in the factory as is referred to by P.W.4. P.W.4's evidence is with reference to the ground realities that were available inside the mill premises in the year 1995 when the occurrence took place. It is not anybody's case that the ground realities available in the mill premises, both inside and outside, as in the year 1995 remain unchanged even by the time when the learned trial Judge conducted the local inspection. The trial commenced in the sessions case by examining P.W.1 on 03.08.2000. Therefore the learned Sessions Judge could have gone for a local inspection only thereafter, since, she herself states in paragraph No.31 of the judgment in challenge that only during the course of trial she went for a local inspection. Therefore what was visible to her eyes during such local inspection could not have been there at all in the year 1995 when the crime took place and in any event that possibility cannot be totally ruled out. If so, then the learned trial Judge is not right in disbelieving P.W.4's evidence with reference to the features in the mill premises observed by her during such local inspection. The learned trial Judge, in paragraph No.33 of her judgment, had found that when it was dark inside the mill premises; there was no other light and when so many machines were found installed in the factory, it is highly doubtful as to whether P.W.4 could have witnessed the incident. As noted earlier, the learned trial Judge, in arriving at such a conclusion, had gone by her observation of the mill premises and the local inspection conducted by her in the course of trial some time after August 2000 and when there is no evidence to show that such was the situation in the year 1995 when the crime is shown to have been committed, and therefore, we have no doubt at all that the

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learned trial Judge had committed an error in law. The learned trial Judge had, in the second part of paragraph No.33 and paragraph No.34 of her judgment, found that the evidence of P.W.4 shows that after the power supply was restored, P.W.1's daughter's dead body was moved from inside the mill to a place outside the mill on it's way to the well. On the above noted evidence, the learned trial Judge proceeded to criticize the prosecution case that however hardened a criminal may be, he would not have dared to carry the dead body to another place in the presence of the factory workers. Once again, we will have to state that this conclusion is not based on any evidence. There is absolutely nothing on record to show that when the dead body of P.W.1's daughter was taken outside the mill for being concealed, any other person available in the factory knew such movement and it must be borne in mind that any offender is not likely to carry the subject matter of his offence open to the public graze. The learned trial Judge once again made use of the observation made by her during her local inspection that there was no way from the main road leading to the nearby well, where the dead body was found. We have to state once again that the learned trial Judge appears to have been guided by the ground realities available on the date of her local inspection forgetting for a moment whether the same realities were there or not even in the year 1995. In other words, the reason given by the learned trial Judge to disbelieve the prosecution case that a hardened criminal would not have dared to remove the dead body from inside the mill premises to a place outside to the public view, is again on surmises and conjectures without any legal evidence to support it. Once again the learned trial Judge had proceeded to hold - inferring from the evidence of P.W.4 - as to why the offender should take a longer route to go to the well when there is a shorter route available. In this case, we have no doubt at all that the learned trial Judge had mis-read the evidence of P.W.4, since, on a perusal of his evidence, we find that he was able to keep track of the movement of the offenders with the dead body only to a certain distance and not beyond that. P.W.4 nowhere states that he saw the offenders till the end, at which point of time they threw the dead body into the well. Therefore we have no doubt at all that till this stage the learned trial Judge's conclusion is purely based on surmises and conjectures and definitely not based on any legal evidence.

45. The learned trial Judge then, by going through the evidence of P.W.4, was inclined to disbelieve him taking into account his conduct during and immediately after the occurrence on the day of the occurrence itself and his conduct in the days following the day of occurrence. Let us ask a question to ourselves as to what is that conduct of P.W.4 which would be

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unbecoming of a person like P.W.4, which shall be commented upon for disbelieving his evidence in a grave crime like this. On going through the evidence of P.W.4, we find that he was totally upset on seeing the crime and he was in a disturbed state of mind. From the fact that he was moving hither and thither inside the mill premises and in between going for a smoke atleast twice in the bathroom, definitely lead us to hold that he was horrified. In fact, when he was told by A1 that the girl died because he did like that, he asked him as to why he is saying like that, since, he was given to understand earlier that as the girl was unconscious, if she is allowed to rest in the bedroom, she would be alright if she could be woken up later. Therefore it is clear that P.W.4 was not taking things lightly but he was having a disturbed mind. He had also stated that when he finished the night duty on that day, he could not sleep on the next day and he went and stayed in his friend's house at a far off place. In the earlier portion of this judgment, we have extracted the relevant portion of his evidence, which throws considerable light on his mental frame on seeing the occurrence and after coming to know that the girl is already dead. It is true that he was roaming here and there near the machines as admitted by him. But that does not mean, as concluded by the learned trial Judge, that he was calm and composed at all times. His evidence on record definitely shows that he was totally unhappy about what had happened. It is also true that he had kept quiet for quite a long time till he came out of the shell for the first time only in the year 1999 when P.W.66 started re-investigating the crime. He is an illiterate rustic villager aged about 17 years and he is a daily wages worker. The money power and the muscle power of A1 and his relatives; P.W.4's poverty would not have given him the courage to speak openly at any time prior to P.W.66 stepping into the investigation. His evidence also shows that even to P.W.66, he refused to divulge the incident stating that he is afraid and only when P.W.66 convinced that he would take care, P.W.4 had come out with the truth in this case. Therefore, the evidence on record shows that within a few minutes after the occurrence, A2 threatened P.W.4 with dire consequences of eliminating his entire family, if he chooses to divulge the crime and that fear must have been running in his mind till 11.11.1998 when P.W.4 gave evidence in the earlier sessions case. The learned trial Judge had completely mis-read this evidence in holding that P.W.4 could not have been under threat at any point of time, though in the later portion of her judgment she would state that atleast till Deepavali 1996, he would have been under the pervasive control of his employer. We again remind ourselves that P.W.4 might have been hardly 17 years of age when the occurrence took place. P.W.4 had also stated in his evidence that at the earliest possible time when

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he was taken before Inspector of Police Anbazhagan (A6), he threatened him that if he does not speak as told to him, he would also be put in the case. Therefore what fear this young boy would have had in his mind cannot be easily visualised. Of course, this witness states in a portion of his evidence that within four or five months after the occurrence, he had disclosed the crime to P.W.1. This appears to be an inadvertent error because, till 11.11.1998, on which day he was examined in the earlier sessions case, he was directed and compelled to speak what he had already disclosed when investigation was done by the then Inspector of Police Anbazhagan. Therefore the learned trial Judge's finding that if really P.W.4 had disclosed the incident at an earlier point of time, it would have been reflected in Exs.P.1 and P.21, does not deserve any merit at all. The learned trial Judge commented as to why P.W.4 chose to falsely implicate a person in respect of the very same crime in S.C.No.110/1998. This is again begging the question, since, his evidence shows that till 11.11.1998, on which day he was examined in S.C.No.110/1998, he was under the watchful eyes of the offenders. P.W.61 is the Inspector of Police, CBCID. On representation sent to the higher ups when the investigation was done by the then Inspector of Police Anbazhagan, he was asked to conduct an enquiry and he accordingly conducted the enquiry on 05.04.1996, 06.04.1996 and 07.04.1996. He had stated that he had sent a report. We have already referred to the evidence of P.W.4 that even to this enquiry conducted by P.W.61, he was not allowed to go on his own as a free citizen but he was escorted by the offenders. Therefore there is overwhelming evidence to show that P.W.4 was not free to tell what he could have wanted to tell. Under these circumstances, the reason given by the learned trial Judge that the conduct of P.W.4, as referred to earlier at the beginning of this discussion, would enable the court to disbelieve him, is totally erroneous and palpably wrong. The learned trial Judge appears to have been obsessed with what she observed during her local inspection in the year 2000 at the crime scene, which had completely blinded her eyes in appreciating the legal evidence on record. At the risk of repetition, we state that there is nothing on record to show that the ground realities available on the date of her inspection in the year 2000 were the ground realities in the year 1995 when the occurrence was committed. The learned trial Judge also repeatedly says that P.W.4 was atleast free from Deepavali 1996 to disclose the crime to anyone as he likes, forgetting for a moment that his evidence discloses that till he was examined in the earlier sessions case on 11.11.1998, he was forced to dance to the tunes of the then Inspector of Police Anbazhagan and the real offenders/his employers. The learned trial Judge's criticism that there was no threat to

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P.W.4 to falsely implicate the sole accused in the earlier sessions case (A4 in the present sessions case), is ill-founded since, P.W.4's evidence shows that at all times namely, even at the nip of his examination in the court in the earlier sessions case, he was asked to say what was already told to him by the police namely, by the then Inspector of Police - Anbazhagan. The final report in the earlier sessions case was filed only against a particular individual, who is now arrayed as A4 and therefore it is clear that the earlier investigation was a designed and biased one to allow the real offenders to go through the escape route. The learned trial Judge rejected P.W.4's evidence in sum and substance solely on one ground namely, though he had plenty of opportunities to disclose the crime to anyone as he liked atleast from a particular point of time, yet, he did not care to do so. In our considered opinion, this appreciation is definitely short of a judicial approach when P.W.4, in sum and substance, had explained as to how he was under the watchful eyes of his employers preventing him to come out with the truth. The learned trial Judge, in disbelieving the evidence of P.W.4, had commented upon the failure of the prosecution to produce before court the statements of P.W.4 recorded during investigation by the then Inspector of Police - Anbazhagan, forgetting for a minute that such statements, being in the nature of earlier statements, can be made use of only for the purpose of contradicting a witness and such a right is available only to the accused and not to the State. Of course, if a witness comes to be treated as hostile, the State can, using the earlier statement of that witness, can contradict him. But that is not the case here. The learned trial Judge in her judgment had held that P.W.4 was atleast free from Deepavali 1996 onwards to come out with a real version and we find that such conclusion is due to her failure to read the evidence of P.W.4 in the manner in which it should be read by any court of ordinary prudence. In other words, P.W.4's evidence contains reasons as to why he could come out with the truth only for the first time after P.W.66 commenced re-investigation. In 1992 - 2 - Crl.L.J.Pg.1545 (Ganeshlas Vs. State of Maharashtra) the Hon'ble Supreme Court of India was appreciating the evidence of a witness, who only, at a later stage came out with a version, which would be in conformity with the prosecution case. The Supreme Court in that case found that the investigation done earlier was not proceeding on the decided lines and therefore the investigation was done later on by the CID police. In that context, the Supreme Court, referring to it's earlier judgment reported in AIR 1971 SC Pg.804 (Balakrishna Swain Vs. State of Orissa), wherein it was held that the evidence of a witness recorded at a later stage must be received with a pinch of salt and the delay defeats justice, proceeded to hold that each case has to

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be considered on it's own facts. On the facts available in the judgment reported in 1992 - 2 - Crl.L.J.Pg.1545 (Ganeshlas Vs. State of Maharashtra), the Supreme Court found the witness to be a truthful witness and therefore agreed with the High Court in placing reliance on the evidence of such witness. On the facts noted in this case, we have no doubt at all that P.W.4's evidence cannot be rejected at all on the ground that he came out with the present version only when re-investigation was done by P.W.66 after getting orders from court.

46. Next we have the evidence of P.W.5. P.W.5 is not an eye witness to the prosecution case of rape and murder. He is examined to speak about the prosecution case falling under section 201 I.P.C. His evidence is that, when he was in the mill, he saw A1 and A4 moving the victim in this case giving their shoulder support followed by A2 and the body was thrown into the well without creating any suspicion. Though he had been cross examined at length, yet, the defence is not in a position to shake his evidence as to what he saw. But his evidence had been disbelieved by the learned trial Judge on the following grounds:

(a) For the first time he was examined only in the year 1999 during re-investigation done by P.W.66;

(b) no steps were taken to examine him earlier;

(c) P.W.5's presence in the mill on the day of occurrence is not established;

(d) P.W.4 does not speak about the presence of P.W.5 in his statement recorded under 164 of the Code of Criminal Procedure during re-investigation;

(e) gunny bags stuffed with cotton would be hung in the roof railings in the mill and this would have disabled P.W.5 from seeing the movement of the offenders outside the mill premises;

(f) P.W.5's conduct in continuing his work normally, despite knowing that the offence had been committed and even thereafter not divulging the crime to anybody would go against him;

(g) P.W.6 not corroborating P.W.5's evidence that he asked him about the watch (M.O.13) and P.W.6 replying that he had sold it to A4 would affect P.W.5's evidence;

(h) Though witnesses admitted that sniffer dog was brought to the crime scene, the dog track record is not produced and therefore an adverse inference must be drawn against the prosecution;

(i)when there was no threat to P.W.5, there is no reason for him to be absent in the crime village; and lastly

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(j) how P.W.66 came to know that P.W.5's examination may throw light.

47. Let us now analyse in a consolidated manner the reasons given by the learned trial Judge for disbelieving P.W.5. The learned trial Judge herself, in paragraph No.42 of her judgment, had found that P.W.5 was also in the thick of things at that time as per Exs.P.1 and P.22. When the learned trial Judge herself had found that the involvement of P.W.5 in the crime was also looming large, then, in our considered opinion, there would be every justifiable reason for P.W.5 to keep himself away from the place since, he would be believing that he is innocent. Whatever it is, the fact remains from the evidence on record that P.W.5 was not to be seen after 22.12.95 in and around the village where the crime had taken place. The learned trial Judge had failed to remember that till P.W.66 took up the reins in the year 1999 after re-investigation was ordered, the present prosecution case is that the earlier Investigating Officer was proceeding on the wrong lines and that is why a final report was also filed by P.W.66 against the erring then Inspector of Police - Anbazhagan. Therefore the learned trial Judge was not justified in finding fault with the present Investigating Officer for not examining P.W.5 earlier than the date on which he took up re-investigation. The learned trial Judge had also commented critically as to how P.W.66 came to lay his hands on P.W.5 and there is no explanation whatsoever forthcoming from P.W.66 in that regard. After having said so, the learned trial Judge took note of the evidence of P.W.66 that he got the address of P.W.5 from another witness by name Rangarajan by examining him and that the said Rangarajan having not been examined in court, it must be held that P.W.5 is a cooked up witness. We have no doubt at all that the learned trial Judge, in saying so, is definitely guilty of not reading the legal evidence available on record. P.W.66 in his evidence had stated that on 01.08.1999 he examined Marudhachalam (examined as P.W.33) and Rangaraj (not examined - the learned trial Judge had commented upon it) and obtained the address of P.W.5 and others. P.W.33 (Marudhachalam) had also deposed in court that P.W.5 told him that he has fear in his mind to work in the mill and requesting the witness to secure him an alternative employment, he left for his village and this was on 24.12.1995. As noted earlier, the learned trial Judge herself had found that P.W.5's name was in the thick of things as per Exs.P.1 and P.22. Therefore there are legal materials available on record as to how and under what circumstances P.W.66 had come to examine P.W.5. When P.W.66 had deposed that by examining a witness namely, Marudhachalam, who is now examined as P.W.33, he got the

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details of P.W.5 and that his case diary contains the address where he had conducted the enquiries - the learned trial Judge proceeded to comment that P.W.66 had not produced the case diary before the court. From a perusal of the evidence of P.W.66, we do not find that he was called upon to produce the case diary in court. It is needless to state and it is an accepted principle that whenever an Investigating Officer gives evidence in court, he always has the case diary with him. The Supreme Court, in the judgment reported in (2005) 12 SCC Pg.545 (Sidharth Vs. State of Bihar), had held that the court is empowered to call for case diaries to find out anything that happened during investigation in a crime. In other words, the court has a right to look into the case diary and for that purpose, it can always direct the Investigating Officer to produce the case diary before it. The learned trial Judge does not appear to have directed P.W.66 to produce the case diary before her. The Supreme Court, in the judgment reported in 1989 SCC Crl.Pg.606 (Mohinder Singh Vs. Union of India and another) had also held that the court is empowered to call for the case diary to aid it in the inquiry or trial subject to the rider that it cannot be used as evidence in court. Therefore the comment made by the learned trial Judge for disbelieving the evidence of P.W.66 as to how he came to examine P.W.5 in the absence of the case diary before court, is not a justifiable criticism. In other words, the above referred to conclusion is in total disregard to the oral evidence of P.Ws.66 and 33 as referred to earlier.

48. Then the learned trial Judge proceeded to doubt the presence of P.W.5 at the occurrence time in the mill on two grounds namely, P.W.4, in his statement recorded under section 164 of the Code during re-investigation, did not mention the presence of P.W.5 in the mill premises. Ex.P.43 is the bunch of statements of witnesses recorded under section 164 of the Code at the request of P.W.66. That bunch contains the statement of P.W.4 as well. We perused that statement. His examination under section 164 of the Code is purely with reference to the occurrence proper. From a perusal of his statement so recorded under section 164 of the Code, it appears that he was not even asked to disclose as to whether any other person saw the crime. In other words, there was no occasion for P.W.4 to mention the name of any other worker, who had also seen the occurrence. Under these circumstances, we are of the firm opinion that simply because P.W.4 did not mention in his earlier statement recorded under section 164 of the Code the presence of P.W.5 in the mill premises at the time of occurrence, would not necessarily mean that P.W.5's presence in the mill premises should be disbelieved. Though the defence was contesting that P.W.5 was never in the employment in the

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mill, yet, the learned trial Judge herself, by relying on Exs.P.106 and 107, which are letters addressed to P.W.5 giving the mill address, had concluded that P.W.5 was in the pay roll of the mill. When that position is established, then we see no reason at all to disbelieve the evidence of P.W.4 in court that P.W.5 is an employee of the mill and that P.W.5's evidence that, as an employee of the mill, he was present in the mill at the occurrence time and saw the accused moving the dead body of P.W.1's daughter outside the mill. In fact, P.W.4 does not even say in his evidence that P.W.5 was watching the movements of the offenders when the dead body was moved outside the mill. Therefore we have no hesitation to hold that the conclusion arrived at by the learned trial Judge that P.W.5's presence in the mill premises on the day of the occurrence is not established, is due to surmises and conjectures only.

49. On the failure to produce the dog squad track record and drawing an adverse inference on it - assuming that the conclusion is right, we have no doubt at all that such adverse inference cannot be used to disbelieve the presence of P.W.5. The very fact that the learned trial Judge had referred to the failure on the part of the prosecuting agency to produce the dog squad track record and the adverse inference drawn as a result thereof while deciding to believe or not to believe P.W.5 itself shows that the learned trial Judge had completely misdirected herself in evaluating the evidence of P.W.5 on it's own merits. The above failure has nothing to do with P.W.5. The learned trial Judge's conclusion that P.W.5 had no reason to absent himself from the crime village after the occurrence, is in contradiction to the finding rendered by the learned trial Judge herself namely, from the month of January 1996 onwards, the aggrieved party was suspecting the involvement of P.W.5 in the crime. We have already found that, if that was the suspected position of P.W.5 and if he believes that he is innocent, then, he had every reason to screen himself and that is what he had done in this case. Then the learned trial Judge, making use of the perception of facts available on the date of her local inspection in the mill premises namely, finding waste cotton stuffed in big gunny bags and hung in roof railings; half of the room stocked with cotton and relying upon the evidence of P.W.5 that gunny bags stuffed with waste cotton would be hung close to the wall, proceeded to conclude that the entire area outside the milk premises would not have been in the view of P.W.5. In other words, the learned trial Judge doubted from the above referred to position, whether P.W.5 would have been in a position to see what is happening outside the milk premises. Here again, we find that the learned trial Judge had committed a fallacy. There is nothing on record to show that on the date of occurrence such gunny bags were hung

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close to the wall in the roof railings. Therefore we have no doubt at all that the facts perceived by the learned trial Judge in the mill premises on the date of her inspection sometime in the year 2000, had completely misdirected her to hold that such would have been the position on the date of occurrence also and therefore P.W.5 would not have seen what is happening outside. As far as M.O.13 (watch) is concerned, the fact that P.W.6 did not support the evidence of P.W.5 that he (P.W.5) asked him about the watch and that he replied stating that he had sold it to A4, is of no consequence at all to doubt the presence of P.W.5 inside the mill on the date of occurrence. Likewise, when P.W.5 was examined under section 164 of the Code on 25.08.1999 during re-investigation done by P.W.66, which stands marked in this case as Ex.D.3, he was not even examined to show as to who were all present in the factory premises on the date of occurrence. In other words, his examination under section 164 of the Code is only with reference to what he saw outside the mill premises. Therefore P.W.5's failure to speak about the presence of P.W.4 in Ex.D.3 referred to above would not mean that P.W.5's presence also must be doubted, especially when the court itself found, based on Exs.P.106 and 107, that P.W.5 was shown to be an employee in the mill. The reasons given by the learned trial Judge, as noted earlier, that hanging gunny bags near the wall from the roof railings and the nature of work of P.W.5 would have disabled him from seeing the movement outside the mill, are definitely not based on any legal evidence but they are based only on surmises and conjectures. The learned trial Judge heavily commented upon the conduct of P.W.5 after seeing the incident, stating that he had accounted for the work done by him to the owner. But his evidence shows that he had to move away to a far off place from his place of ordinary residence, which is in close proximity to the mill, after the event and then expressing his fear to continue in the mill any more to P.W.33 and requesting him to look for an alternative employment elsewhere to him, he left for his village. Therefore this conduct on the part of P.W.5, in our considered opinion, would be the normal conduct of a person who had seen the offence having been committed and who wanted to disassociate himself from the centre stage, especially when the learned trial Judge herself had found that the aggrieved party was having an eye on him on his suspected involvement from January 1996 onwards. It is true that P.W.5 in his evidence does not say that he was threatened by anyone either to keep quiet or to falsely implicate somebody else. But however, from the materials already noted above namely, his involvement was also suspected by the aggrieved party, he would have definitely scented danger and the fear he would have had in his mind as a consequence thereof would have been ruling him to keep

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himself away from the view of others. P.W.5 was also of 23 years of age when he was examined in Court on 3.8.2000. A reading of the judgment in challenge shows that the learned trial Judge appears to be pre-dominantly guided to disbelieve P.W.5 mainly on the ground that he came to be examined only during re-investigation and that his conduct after the crime is not befitting the conduct of a natural witness. These two reasons given by the learned trial Judge, after discussion, are found to be not worth the paper on which it is written. The grievance of the prosecution party is the investigation at the initial stage was on the wrong lines and therefore the reasons are not far off to see that Anbazhagan, Inspector of Police (A6) would have definitely avoided examining P.W.5. Only when P.W.66 stepped in during re-investigation, he though it fit to examine the witness including P.W.5 and that is how P.W.5 had come to be examined only for the first time by P.W.66. Therefore we hold that the learned trial Judge had totally erred in law and on facts in disbelieving the evidence of P.W.5. The conclusion arrived at by the learned trial Judge that P.Ws.4 and 5 did not respond in the manner in which the learned trial Judge expected them to respond after seeing the crime and therefore their evidence should be disbelieved, does not stand to rhyme or reason. Courts have been consistently holding that response of a person as a witness after seeing the crime would vary from individual to individual and therefore there cannot be any uniform rule that a witness has to respond only in a particular manner. In other words, the court, before which evidence of such witnesses come up for evaluation, must evaluate it, taking into account the several circumstances available in that case. In evaluating the evidence of P.Ws.4 and 5, in the back ground of the circumstances in which they were placed right from the date on which the occurrence was committed, we find that both P.Ws.4 and 5 are truthful and natural witnesses and there are no legal and justifiable reasons to disbelieve their evidence. As noted earlier, rejection of their evidence by the lower court is based on surmises and conjectures and facts perceived by the learned trial Judge at the time of local inspection held sometime in the year 2000. The learned trial Judge herself had commented upon the lapses committed by the then Inspector of Police - Anbazhagan. In summing up our discussion, we hold that the evidence of P.Ws.4 and 5 deserve acceptance and accordingly we accept it. P.W.4's evidence shows that P.W.1's daughter was raped; in the course of the same transaction, she died and then, her dead body was taken out of the mill premises. P.W.5's evidence shows that the dead body of P.W.1's daughter was taken and dropped in a well. There cannot be any two opinion about our conclusion on the lines indicated above.

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50. A Constitution Bench of the Supreme Court, in the judgment reported in AIR 1963 SC Pg.200 (M.G.Agarwal Vs. State of Maharashtra), while dealing with the powers of the appellate court hearing an appeal against acquittal, had laid down the law as hereunder:

> "Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasized and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that, however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused.
>
> The test suggested by the expression "substantial and compelling reasons" for reversing a judgment of acquittal, should not be construed as a formula which has to be rigidly applied in every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse."

The Supreme Court, in the judgment reported in 1977 Crl.L.J.Pg.613 (Rajendra Prasad Vs. State of Bihar), while dealing with the powers of the appellate court, held as follows:

> "When a trial court, with full view of the witnesses, acquits an accused after disbelieving direct testimony, it will be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds, from the record, for discarding the reasons of the trial court in order to be able to reach a contrary conclusion of guilt of the accused. The High Court should be able

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to point out in its judgment that the trial court's reasons are palpably and unerringly shaky and its own reasons are demonstrably cogent. As a salutary rule of appreciation of evidence, in an appeal against acquittal, it is not legally sufficient that it is just possible for the High Court to take a contrary view about the credibility of witnesses but it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the trial court to reject their testimony."

Recently, the Honourable Supreme Court of India in the judgment reported in AIR 2007 Supreme Court Weekly page 1302 (State of Madhya Pradesh V. Bacchudas) while dealing with the powers of the Appellate Court in hearing an appeal against acquittal had summarised the position in law as here under:

"There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not *(see Bhagwan Singh V. State of M.P. 2003 (3) SCC 21)*. The principle to be followed by the appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling the substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These

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aspects were highlighted by this Court in Shivaji Sahabrao Bobade V. State of Maharashtra (1973(2) SCC 793); Ramesh Babulal Doshi V. Sate of Gujarat (1996 (9) SCC 225); Jaswant Singh V. State of Haryana (2000 (4) SCC 484); Raj Kishore Jha V. State of Bihar (2003(11) SCC 519); State of Punjab V. Karnail Singh (2003 (11) SCC 271); State of Punjab V. Phola Singh (2003(11) SCC 58); Suchand Pal V. Phani Pal (2003 (11) SCC 527) and Sachchey Lal Tiwari V. State of U.P. (2004 (11) SCC 410)."

Our analysis of the entire evidence on record undoubtedly show that the judgment under challenge is definitely unreasonable and the reasons given by it for acquitting the accused are palpably wrong. We have given our cogent reasons as to why this court decided to interfere with the judgment under challenge. We have no doubt at all that the acquittal of the accused had definitely resulted in miscarriage of justice.

51. The question that still survives for decision is whether the evidence of P.Ws.4 and 5 establish all the offences alleged against all the accused? The charges framed against the accused are under sections 376 and 302 I.P.C - A1 and sections 120-B and 201 I.P.C - A1 to A5. As noted earlier, the learned trial Judge had acquitted the accused of all the offences referred to earlier. In the present case, on going through the materials, we do find that there is absolutely no evidence to show that at any point of time the accused hatched a criminal conspiracy. Accordingly, the finding rendered by the learned trial Judge that the conspiracy charge had not been proved against all the accused has to be sustained and accordingly it is sustained. As far as the charge under section 201 I.P.C is concerned, we find that the reasons given by the learned trial Judge for acquitting A3 and A5 are supported by legal evidence and therefore it cannot be interfered with. In acquitting A3 and A5, the learned trial Judge accepted the evidence of P.Ws. 4 and 5 and therefore, it is all the more necessary to agree with the learned trial Judge in acquitting A3 and A5, since it is based on pure appreciation of evidence and the view taken by the learned trial Judge in that regard is possible. Accordingly the acquittal of A3 and A5 under section 201 I.P.C is sustained. Now coming to the conviction of A1 under Sections 376, 302 and 201 I.P.C. is concerned, we find that from the evidence of P.W.4 coupled with the medical evidence/the expert's evidence and their reports, the prosecution had definitely established that the deceased in this case was sexually assaulted by A1 and therefore, the offence under Section 376 I.P.C. definitely stands established.

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As far as the offence under Section 302 I.P.C. is concerned, we do find that P.W.4 no where says that he saw A1 in the course of sexually assaulting the victim had strangulated her to death. The cause of death is due to asphyxia as a result of block to the air passage associated with injuries. P.W.1's daughter was found alive by P.W.4 in the company of A1 at or about the time when she was sexually assaulted and P.W.4 heard her protesting the sexual assault. P.W.4's evidence also shows that after the sexual assault, P.W.4 was made to believe by A2 that the victim was unconscious and therefore she must be taken to the bedroom for rest, so that she would come back to normalcy and accordingly, P.W.4 helped A1 and A2 in taking the girl to the bed room, where she was made to rest. Some time thereafter, A2 called P.W.4 to assist him once again in handling the girl and at that time, A1 told P.W.4 that because he did like that the girl died. P.W.4 had stated that on hearing that he asked A1 as to why he could talk like that though P.W.4 was earlier informed that the girl is only unwell and that she would become normal if she is allowed to take rest. Therefore, P.W.4's evidence shows without any doubt that the girl, who was found alive a little earlier when she was sexually assaulted by A1, died some time later. It is A1, who was found with her when she was alive and it is A1, who told P.W.4 that she is dead. There are injuries on her body. As already noted, medical evidence shows that death is due to asphyxia as a result of block to the air passage. Therefore, A1 has a duty to explain as to how the girl came to die after his initial sexual assault on her. A1 had not come out with any answer at all. Under these circumstances, we have no doubt at all that if we read the evidence of P.W.4 as a whole, then it clearly establishes that the girl met her end only in the course of the sexual assault perpetrated by A1 on her or immediately thereafter. Accordingly, we find that the prosecution had also established the offence under Section 302 I.P.C. against A1. As far as the offence under Section 201 I.P.C. is concerned, the evidence of P.W.4 shows that the dead body was moved by A1 and A4 from the mill premises followed by A2. P.W.5's evidence is that the above referred to three accused moved the dead body making it appear as though there is nothing unusual and then threw the body into the well. A careful reading of the evidence of P.W.s.4 and 5 establish beyond doubt that A1, A2 and A4 are guilty of the offence under Section 201 I.P.C.

52. The net result of our analysis is as here under:

> "The acquittal of A1 to A5 under section 120-B I.P.C is sustained; the acquittal of A3 and A5 under section 201

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I.P.C is sustained; the acquittal of A1 under sections 376, 302 and 201 I.P.C is set aside and instead, he is found guilty under the above referred to sections; the acquittal of A2 and A4 under section 201 I.P.C is also set aside and instead, they are found guilty under the above referred to section."

53. Before parting with this case we want to conclude as here under:

"Let not the mighty and the rich think that Courts are their paradise and in the legal arena they are the dominant players; let this judgment make it clear that the weak and the poor would also have a level playing ground in the legal battle; as the 'Sun' cannot be kept under clouds for all time to come, the truth, which may remain buried for sometime under the thick carpet woven by the mighty, would also come out in it's great splendour and the Majesty of Law will march on forever, unmindful of people who come before it but ensuring that they are treated alike".

Since we interfered with the judgment under challenge in exercising the appellate power, we are of the opinion that there need not be any separate order in Crl.R.C.No.239 of 2001. In other words, since this Court had re-appreciated the entire evidence and came to a different conclusion as far as A1, A2 and A4 are concerned, we feel that nothing survives in Crl.R.C.No.239 of 2001. Accordingly, it stands disposed of.

For questioning the accused on sentence, call on 9.4.2007.

54. We would be failing in our duty if we do not place on record our appreciation for P.W.66:-

"P.W.66 would have had great conviction and courage when he moved the Court for permission to re-investigate; he was seeing witnesses turning topsy-turvey in Court in the earlier trial which should have not only shocked his conscience but also triggered his passion to unravel the truth; with great alacrity in mind he swung into action and obtained the permission to re-investigate; but for that timely action, the trial in the earlier sessions case could have reached

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it's logical end; the theme of the earlier trial, in which many played different roles, was to project one individual (A4 in the present trial) as the accused of the offences and stage managing a drama in the Court to get him acquitted. If this was allowed to happen then not only the innocent but also the real offenders would have escaped the clutches of law; but alas the theme failed and P.W.66 had unravelled the truth; P.W.66 by getting the truth unravelled would definitely receive the 'wrath' of a few black sheep in the police force; P.W.66 is a shining star in the Tamilnadu Police Force and let his Tribe flourish."

The Crl.A.No.152 of 2001 having been posted on 9.4.2007 for questioning the accused on sentence pursuant to the order of this Court dated 4.4.2007 and made in Crl.A.No.152/01 and Crl.R.C.239 of 2001 and in the presence of the aforesaid advocates, the Court made the order.

(Judgment of the Court was made by R. Balasubramanian, J)

A.1 namely, Rathinam @ Rathinan in S.C.No.96 of 2000 on the file of Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore is present in court today. We explained to him that we have found him guilty under Sections 376, 302 and 201 I.P.C. and we asked him as to what he wants to say on the sentence to be imposed on him. He answered as hereunder:-

"He is innocent and he had not committed the crime at all; his father is having heart problem; the accused is having a child which is studying in the School and therefore this court can consider imposing a lenient sentence."

We carefully applied our mind to the submissions made before us. We accordingly sentence A.1 for the offences for which he is found guilty as hereunder:-

"For the offence under Section 376 I.P.C., he shall stand sentenced to undergo seven years rigorous imprisonment; for the offence under Section 302 I.P.C. he shall stand sentenced to undergo imprisonment for life and for the offence under Section 201 I.P.C. he shall stand sentenced to undergo three years rigorous imprisonment.

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The sentences are directed to run concurrently."

The deceased in this case is a young girl aged about 16 years and she was working in the mill as a labourer. P.W.1 is her mother. Having regard to the circumstances under which the occurrence is shown to have been committed and the loss that had resulted to the family of the deceased namely, P.W.1 and her husband, we do not want to impose any fine as a part of the sentence on the first respondent/A.1 Instead we direct him to pay a consolidated sum of Rs.2 lakhs as compensation to P.W.1. The first accused will have time till 2nd July,2007 to deposit the said sum of Rs.2 lakhs awarded by us as compensation to the credit of S.C.No.96 of 2000 on the file of I Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore. On such deposit, the Court of Sessions is directed to issue summons to P.W.1 and after informing her, invest the said sum of Rs.2 lakhs in Fixed Deposit in any Nationalised Bank of her choice for a period of five years. The court of Sessions would direct the Bank to pay over the interest accruing on such deposit month after month to P.W.1. We direct the accused/A.1 to be confined in Central Prison, Chennai now located at Puzhal for the present, who shall later on be transferred to the Central Prison at Coimbatore.

2. A.2/Dhanusu @ Danushkodi in S.C.No.96 of 2000 on the file of Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore.is present in court today. We explained to A.2 that he stands convicted by us under Section 201 I.P.C. and asked him as to what he wants to say on sentence. He answered as hereunder:-

> "He is innocent and he had not committed any crime at all; his father is a diabetic and he had his kidney affected; the accused is a bachelor; he is a small farmer; he has to support his father and therefore taking these facts into account, this court may consider imposing a lenient sentence."

We carefully applied our mind to the submissions made before us by A.2 and having regard to the gravity of the offence, we are inclined to sentence him to undergo two years rigorous imprisonment together with a fine of Rs.5,000/- in default to undergo six months rigorous imprisonment. We direct accused/A.2 to be confined in Central Prison, Chennai now located at Puzhal for the present, who shall later on be transferred to the Central Prison at Coimbatore. It is stated by the learned counsel for the second accused that A.2 had already been in prison as an under-trial prisoner for a period

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of seven months. The prison authorities is directed to verify the period of imprisonment if any already undergone by the convicted accused. If so, the period of sentence already undergone by the accused/A.2 would be set off against the sentence imposed on him by us now.

3. A.4/Sundaram alias Sundarasamy in S.C.No.96 of 2000 on the file of Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore is present in court today. We explained to A.4 that he stands convicted by us under Section 201 I.P.C. and asked him as to what he wants to say on sentence. He answered as hereunder:-

> "He is innocent and he had not committed any crime; he has two children aged about 10 and 7 years and they are studying in School; his mother is aged 60 years and he has to look after her and therefore taking these facts into account, this court may consider imposing a lenient sentence."

When we asked the learned State Counsel as to whether A.4 had ever been in prison at all in connection with the incident, learned State Counsel, on instructions from the investigating officer present in court, states that when S.C.No.110 of 1998 was pending, in which A.4 alone was arrayed as the sole accused, he had been in prison for almost three months. We carefully applied our mind to the submissions made before us by A.4. He is a mill worker. From the materials noted by us in the judgment, it appears that he was made a scapegoat to face the trial in S.C.No.110 of 1998. When he was the sole accused in that case namely, in S.C.No.110 of 1998, he was produced before Judicial Magistrate stating that A.4 (sole accused in S.C.No.110 of 1998) was willing to give a confession statement . To the then Magistrate, the present accused/A4 had informed that he had not committed the crime and that he was unnecessarily implicated. To our mind it appears that he is a victim of circumstances namely, A.1 is his employer; A.2 is the cousin of A.1 and to oblige A.1 and A.2 the present accused appears to have committed the crime. The occurrence was on 23.12.1995.

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4. On the facts noted above, we feel that the case of the present accused, namely, A.4 must be viewed from a totally different angle. Accordingly, we are inclined to sentence him to undergo imprisonment for one year. We are not imposing any fine amount. Since A.4 is shown to have been in prison for a period of three months, we feel that the ends of justice would be met if the sentence of one year rigorous imprisonment

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imposed on him is reduced to the period already undergone. However we direct the prison authorities to verify whether A.4 had already undergone three months imprisonment in the prison as noted above. If he had factually undergone that period of imprisonment, then he shall be let off by the prison authorities, as otherwise, A.4 would be in prison to serve the total period of three months rigorous imprisonment as per the judgment. We direct the accused/A.4 to be confined in Central Prison, Chennai now located at Puzhal for the present, who shall later on be transferred to the Central Prison at Coimbatore. The Central Prison, Coimbatore, before whom, A.4 would stand finally transmitted would comply with the exercise indicated above on the same day on which A.4 stands committed to the prison and complete it on the same day.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Tr/

To

1.The First Additional Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore.

2.-do- thro' The Principal Sessions Judge,Coimbatore.

3.The Superintendent,Central Prison,
Puzhal, Chennai.
(in duplicate for communication to the accused)

4.The Superintendent,Central Prison,
Coimbatore.

5.The Public Prosecutor,
High Court, Madras.

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6.The Inspector of Police CBCID,
All Women P.S.,B-9 Saravanampatty P.S.,
Coimbatore City.

7.The Director General of Police,
Mylapore, Chennai -4.

8.The District Collector,
Coimbatore District.

+1cc to Mr.D.Shivakumaran, Advocate Sr 23088

JRG (CO)
km/11.4.

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